

NUNC COGNOSCO EX PARTE



TRENT UNIVERSITY
LIBRARY

PRESENTED BY

Mrs. W. B. Munro

THE
PUBLICATIONS OF
THE CHAMPLAIN
SOCIETY

DOCUMENTS RELATING TO THE
SEIGNIORIAL TENURE IN
CANADA (1598-1854)



TORONTO
THE CHAMPLAIN SOCIETY

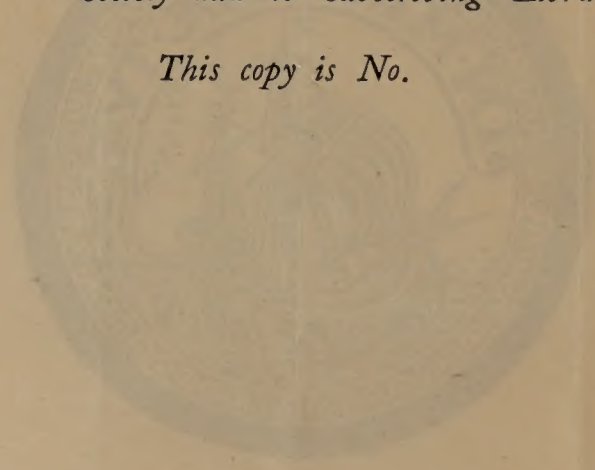
Number

THE
PUBLICATIONS OF
THE CHAMPAIGN
SOCIETY

DOCUMENTS RELATING TO THE
SEIGNIORIAL TENURE IN

*Five Hundred and Twenty Copies of
this Volume have been printed. Twenty
are reserved for Editorial purposes.
The remaining Five Hundred are
supplied only to Members of the
Society and to Subscribing Libraries.*

This copy is No.



TORONTO
THE CHAMPAIGN SOCIETY

DOCUMENTS RELATING
TO THE SEIGNIORIAL
TENURE IN CANADA
(1598-1854)

EDITED, WITH AN INTRODUCTION AND NOTES,

BY

WILLIAM BENNETT MUNRO, PH.D., LL.B.

ASSISTANT PROFESSOR OF THE SCIENCE OF GOVERNMENT IN
HARVARD UNIVERSITY

AUTHOR OF "THE SEIGNIORIAL SYSTEM IN CANADA"

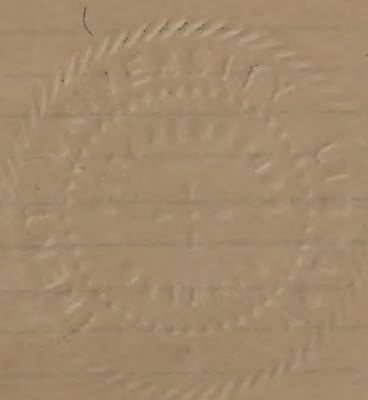
TORONTO
THE CHAMPLAIN SOCIETY
1908

F5000 .C5 v.3 Introd

DOCUMENTS RELATING
TO THE REIGN
OF THE EMPEROR IN CANADA
(1824-1825)

THE CHAMPAIGN SOCIETY
OF THE CITY OF CHICAGO
PUBLISHED BY THE SOCIETY
OF THE CITY OF CHICAGO
IN THE CITY OF CHICAGO
IN THE YEAR 1825

CHICAGO
THE CHAMPAIGN SOCIETY
1825



35685

The ways of the royal authorities during the old régime were often inscrutable, a definite line of policy, adopted after mature consideration, being not infrequently abandoned hastily and without explanation. From the general tenor of the royal statements in connection with the demise of the Company of One Hundred Associates, for instance, it might well have been assumed that, for the time being at any rate, his Majesty was through with the method of colonisation by chartered companies. Nevertheless, the new royal administration had been installed in New France less than a single year when Louis XIV., under the inspiration of Colbert, gave his patronage to a new corporate organisation, the Company of the West Indies, and entrusted to it, among other important powers, the right to make seigniorial land grants in the colony. Indeed, the charter of this corporation, granted in 1664, gave powers and privileges fully as extensive as those committed to the Company of One Hundred Associates some thirty-seven years before.¹ "The said Company as seigniors of the said lands and islands," runs one of the sections of this charter, "shall enjoy the seigniorial rights which are at present established therein upon the inhabitants of the same, as such rights are now levied by the seigniors in possession, unless the said Company shall deem it proper to commute such rights for the relief of the said inhabitants." Furthermore, the Company was empowered "to sell or subinfeudate the said lands by way of enfeoffment . . . upon payment of and for such *cens et rentes* or other seigniorial rights as may be deemed proper, and to such persons as the Company may deem fit." A new epoch in the history of laws relating to land tenure was inaugurated by the terms of this charter, for one of its sections made provision that thenceforth all contracts should be made and construed in accordance with the rules laid down in the Custom of Paris.² Not only was

¹ Extracts from the Charter of the Company of the West Indies, May 1664, printed below, pp. 17-19.

² Section xxxiii.

this code of laws designated for general use in the colony, but the colonial authorities were forbidden to have resort to any other custom; for it was evidently the design of the royal government that the colony should be spared the legal disorganisation which, owing to the multitude of local customs, characterised France at this time.

During the period prior to the enactment of this regulation in 1664, contracts relating to land had in the main followed the terms of the custom of the French Vexin (*Vexin le Français*), a code of legal canons not forming part of the Custom of Paris but in a sense supplementary to it. Thenceforward, however, the Custom of Paris became what one might reasonably call the "common law" of New France. This code, embodying, as it did in the main, long-standing customs which had developed within the limits of the Prévôté and Vicomté of Paris (the district immediately surrounding the French metropolis), was obviously better suited to the needs of a well-developed urban community than to the problems of a struggling agricultural colony. Since the population of New France was largely of Norman extraction, the Custom of Normandy might, as the present writer has elsewhere suggested,¹ have been more fittingly designated as the basis of the colonial law system; but this the royal authorities could scarcely have been expected to recommend. At any rate, by the middle of the seventeenth century the Custom of Paris had acquired a very well-defined primacy over the other coutumes of France, and it was rapidly securing recognition as the type to which the rules of law in other local jurisdictions ought to conform. As the great mass of the colonial population was wholly unfamiliar with the rules of the Custom, the authorities naturally found difficulty in securing strict adherence to them; and the intendant made frequent complaint that the general ignorance about them was the

¹ W. B. Munro, *The Seigniorial System in Canada* (New York, Longmans, Green & Co., 1907).

24/3/08

HISTORICAL INTRODUCTION xxxiii

direct cause of much needless litigation. On the whole, however, the introduction of the Custom of Paris was, in the long run, an act as salutary as it was logical.

The Company of the West Indies proceeded forthwith to assume its land-granting powers in Canada by sending out to New France in 1665, as its general agent, M. Le Barroys, who was instructed to make such seigniorial concessions as he might think advisable, and to see that the Company was promptly paid its dues by the seigniorial *cessionnaires*. Le Barroys, however, soon became so much engrossed in the trading operations of the Company that he seems promptly to have concluded that the duty of passing upon applications for seigniorial grants might more properly be laid upon the royal intendant of the colony, who should, however, make the grants in the Company's name. About a year after his arrival at Quebec, therefore, he presented to the chief royal officials in the colony a memorial in which he proposed that the Company should be relieved of its responsibilities in regard to the concession of seigniories, and that henceforth all such grants should be made by the intendant, who should also determine the extent and conditions of such allotments.¹ This proposal was favourably considered, and during the next decade most of the seigniorial grants were made by the intendant alone. In a few cases, however, the Company interposed to make concessions upon its own responsibility.

The office of intendant in New France was in 1666 held by Jean Talon, who as his despatches show, had very ambitious plans for developing the agricultural resources of the colony. Among other comprehensive schemes, he conceived the idea of settling the more vulnerable parts of the colony with a military yeomanry, a plan suggested by the fact

¹ Extract from the Memorial of M. Le Barroys to Messieurs de Tracy, de Courcelle, and Talon concerning the Procedure to be followed in making Grants of Seigniories in New France, August 18, 1666, *printed below*, pp. 20-21.

that the king had in 1665 sent out to New France the Carignan-Salières regiment, a detachment comprising more than a thousand rank and file. These troops were effectively used for two years in impressing the Mohawks with the punitive power of the French, and when their task was completed would, in the ordinary course of affairs, have been ordered home to France. In fact, a few companies had already left the colony when Talon came forward with a proposal that the rest of them should be disbanded in Canada, and that both officers and men should be persuaded to become permanent settlers in the New World. The enterprising intendant suggested that the officers of the regiment should be allotted generous tracts of land to be held as seigniories, and that each officer should subgrant farms within his seigniority to such non-commissioned officers and men as might be induced to remain in Canada. With considerable pertinence Talon drew attention to the old Roman practice of mustering out legions upon the lands of the border provinces, the *prædia militaria*, and suggested that "the practice of this politic and warlike people might be judiciously followed in a land separated a thousand leagues from its monarch," and likely to be forced to depend very frequently upon its own military resources for defence against its encircling enemies. The plan, Talon proceeded to suggest, would make no permanent demands upon the royal treasury; for, after the initial expense of placing the officers and soldiers upon the land had been provided for, the whole body might be looked upon as self-supporting. The colony would thus receive a welcome addition to its defensive strength, and the cost would, in the long run, be very much less than that which would be incurred by maintaining a force of regular troops permanently in the colony. The military settlers would, the intendant hoped, prove in all respects as serviceable as regular troops, and even more so; for they might be counted upon to show a rare zeal in the defence of what they would come to regard as their

own special heritage. Talon's plan, furthermore, contemplated that in future the titles of all lands granted in Canada, whether to soldiers or to civilians, should expressly state the military nature of the tenure under which they were to be held, and that the recipients of grants should, in return for exemption from the regular seigniorial dues, pledge themselves to send their eldest sons, when these should reach the age of sixteen years, to receive training in arms at one of the colonial garrison-posts, this training to be given without compensation.¹

The suggestions of the intendant were endorsed by his colleagues in office at Quebec, Tracy and Courcelle, and were then submitted to the king, who promptly gave his approval and sent to Canada the funds needed to carry out the project. It was arranged that generous sums should be distributed among the officers to assist them in making a favourable start as seigniorial lords in New France, and that each non-commissioned officer and soldier should be assured of a year's rations and the equivalent of a year's regular pay. These terms proved acceptable on the whole, about twenty-five officers, mainly captains and lieutenants, signifying their willingness to remain in the colony. Of the non-commissioned officers and men who agreed to make Canada their home it is not easy to give definite figures, but the number probably lay between four and five hundred. The addition to the colonial population was, therefore, substantial and acceptable.

It was the design of the authorities so to locate this new body of settlers that it might be highly effective in conducing to the defensive strength of the country. New France was vulnerable to her English rivals at only two important points; she could be attacked easily by way of the Lower St. Lawrence or by way of Lake Champlain and Richelieu River. For

¹ Extract from the Draft of Regulations relating to the Administration of Justice and the Distribution of Lands in Canada, submitted by M. Talon to Messieurs de Tracy and de Courcelle, January 24, 1667, *printed below*, pp. 22-26.

defence against attacks directed by way of the former route, the authorities had to trust, in the main, to the fortifications of Quebec, which, though rude enough at this time, in 1690 proved sufficiently effective against a strong expedition. The Richelieu country was, therefore, the colony's most vulnerable point; for it was the portal through which its enemies naturally entered the land from the south. The Mohawks had used it with results frequently disastrous to the French; and there seemed to be no reason why the militiamen of New England would not use it in a similar manner. That Talon displayed strategic sense and foresight in the recognition of the military importance of the Richelieu region is proved by the extensive use made of the Lake Champlain route during the Anglo-French wars of the eighteenth century, during the Revolutionary war, and during the war of 1812. To strengthen the colony at its weakest point, therefore, the Quebec authorities determined that the Carignan settlers should be located along the Richelieu River from its confluence with the St. Lawrence well on to the point where it debouches from Lake Champlain. Generous tracts of land on both sides of the river were distributed as seigniories among the officers, the rank and file proceeded to choose their farms within these limits, and soon the region took on the appearance of a considerable military cantonment.

When the officers had selected their lands and, with the funds provided by the king, had begun to make progress in the development of their seigniories, title-deeds were issued to them in due form by the intendant, each bearing date either October 29 or November 3, 1672, though actual possession of the land had in some cases been given three or four years previously. From the deed of the seigniorie of Saurel (Sorel), granted to Captain Pierre de Saurel, one may obtain a general idea of the purposes which the home authorities had in mind, as well as of the powers and responsibilities assumed by the

military seigniors.¹ "His Majesty," runs the patent, "having at all times sought with care and the zeal suitable to his just title of eldest son of the Church the means of extending in the most distant countries, by the propagation of the Faith and the diffusion of the Gospel, the glory of God and the Christian name, first and principal object of the establishment of the French colony in Canada, and, accessorially, of making known unto the bounds of the earth most remote from the intercourse of civilised men the greatness of his name and the power of his arms, and having judged that there were no surer means to this end than to compose this colony of people qualified by their personal character properly to fill it up, to extend it by their labour and application to agriculture, and to maintain it by a vigorous defence against the insults and attacks to which it might hereafter be exposed, has sent to this country a number of his faithful subjects, officers of his troops in the Regiment de Carignan and others, most of whom, conforming to the great and pious designs of His Majesty, are willing to connect themselves with the country, by forming therein settlements and seigniories of an extent proportionate to their means; and whereas the Sieur de Saurel, captain in the Carignan regiment, has petitioned us to grant him a portion thereof," the deed proceeds to convey to him the tract of land at the confluence of the St. Lawrence and the Richelieu upon which now stands the town that now bears his name. By the terms of the grant, Saurel was put under obligation to render fealty and homage at the Castle of St. Louis at Quebec whenever the performance of such ceremony should be in order, to permit his dependants to carry appeals from the courts of the seigniority to the royal judges, to inhabit and to cultivate his tract and to see that his dependants did likewise, and to perform such other seigniorial duties as

¹ Title-deed of the Seigniority of Saurel, granted to Pierre de Saurel, officer of the Carignan-Salières Regiment, October, 29, 1672, *printed below*, pp. 34-36.

the terms of the Custom of Paris laid upon all holders of seigniorial lands.

The settlement of the Carignans in New France gave a considerable impetus to the seigniorial system and to the general agricultural development of the colony. Immigrants from France now came in larger numbers, among them numbers of women, whom the home authorities sent out to New France at the intendant's request, in order that the Carignan settlers and others might not want for wives. The colonial population, given as 3928 in the autumn of 1667, had risen to 6282 before the close of the following year. During the years 1667-72 a large number of seigniories were granted, and it was in this period that the seigniorial system took a firm grip upon the colony. Under the spur of royal encouragement the country began, for the first time, to assume an air of activity and prosperity, and the colonial authorities ventured to couch their despatches in more hopeful terms. Agricultural progress, however, though promising, was not sufficiently rapid to satisfy the minister, who showed a disposition to discount the glowing reports of his colonial representatives by calling frequently for detailed statements showing just how much of the granted land was being actually cleared and inhabited.¹ The royal instructions to the effect that uncleared lands should be declared forfeited to the crown were also re-iterated;² but the colonial authorities, realising the difficulties under which the clearing of the land was being accomplished,³ usually contrived to avoid any rigorous enforcement of these commands.

During the decade intervening between 1666 and 1676 seigniorial grants had been made by the intendant alone, but in

¹ Memorandum [from the Minister] asking Talon for a Statement of Land Grants made in Canada [1669], *printed below*, p. 31.

² Arrêt of the Royal Council providing for the Retrenchment of Land Grants in Canada, June 4, 1672, *below*, pp. 32-34.

³ Despatch of Talon to the Minister, November 11, 1671, *below*, p. 32.

the latter year it was arranged that thenceforth they should be made by the governor and intendant jointly.¹ From this time forth the title-deeds were usually signed by both officials; but during the intendency of Duchesneau, when the relations between the two higher officers were badly strained, the intendant undertook the responsibility of issuing the patents upon his own initiative.² For this and for his other failures to obey the royal instructions, Duchesneau was soundly rebuked by the minister; and a little later, when royal admonitions had not sufficed to bring about harmony between the governor and intendant, both were recalled to France.

During the last quarter of the seventeenth century the progress of colonial agriculture was, as we learn from the reports of officials, hampered by various drawbacks. First among the obstacles, as emphasised by Duchesneau, was the superior attraction of the fur trade, which drew the men off the land and lured them to the western wilderness. The younger men of the colony succumbed to the fascination of the forest life, and abandoning their lands and families betook themselves by the score to the roving life of the *coureur-de-bois*. In stemming this hegira the disciplinary weapons of State and Church were alike impotent; and the fur traffic continued throughout the whole period to absorb much of the colony's interest and enterprise.

A second obstacle to agricultural progress, as the intendant believed, was the shiftlessness and lack of consistent industry which were too common among the members of that class from which the colony had reason to look for inspiration and initiative. Many of the gentilshommes and seigniors preferred, he said, to lead the lives of country gentlemen, fishing and hunting, but contributing little or nothing to the permanent upbuilding of the colony. Taking no thought for the

¹ Royal Arrêt empowering the Governor and Intendant jointly to make Land Grants in Canada, May 20, 1676, *printed below*, pp. 41-42.

² See *below*, pp. 47, 51.

morrow, many of them were in such abject poverty that, in Duchesneau's opinion, they formed an element of the population without whom the colony might have got along very well. Elevation to rank in the noblesse, he said, sometimes spoiled the colonist, making him proud and indolent. Noel Langlois, for example, had been a good carpenter until he had amassed enough to buy a half-developed seignior; whereupon he regarded himself as a gentilhomme, and was too proud to work but not too proud to allow his family to suffer in poverty and become a public charge.¹ In a word, those who were the natural leaders of the colonial population were deficient in the prime qualities of economic leadership.

Not least among the difficulties which attended the development of the colony's agricultural resources was the constant danger from Indian raids. Throughout the seventeenth century scarcely a seignior in the colony was entirely free from attack, for the treacherous bands penetrated at times even to the immediate vicinity of Montreal and Three Rivers. Labourers in all parts of the colony went armed to the fields, and always worked in groups that they might not be taken unawares. Some armed forces were maintained in the colony to be sure, and the authorities strove in every other way to afford protection to the settlers; but the task of defending those engaged in agriculture against the inroads of marauding redskins was rendered extremely difficult by the disposition of the settlers to scatter themselves, contrary to the royal wishes, in *côtes* along the river bank instead of grouping their houses into compact hamlets or villages. In the course of time the whole northern shore of the St. Lawrence was dotted with the white dwellings of the habitants, the colony taking on the appearance of one long, straggling, village street. The houses, separated as they often were at considerable intervals

¹ Despatch of Duchesneau to the Minister concerning the Progress of Agriculture, November 10, 1679, *printed below*, pp. 49-53.

from one another, could be attacked and burned by the Indians before aid from neighbours could be obtained.

This peculiar distribution of the colonial population was due mainly to the physical configuration of the colony. In the earlier years of French colonisation the St. Lawrence was the great highway of colonial intercourse; hence those who applied for seigniorial grants desired to have their lands border on this stream. As the river frontage was not unlimited, however, the authorities, in locating the seigniories, adopted the oblong shape, giving the grantee a limited frontage on the river with a generous depth inland, almost invariably two or three times as great as the frontage. The seigniors, in their turn, adopted the same configuration in making subgrants to their dependants, giving to each settler a plot of land with perhaps from ten to twenty arpents in front, and from forty to eighty in depth. In time a road was built along the north shore from Quebec to Montréal, passing through each seignior in turn and forming, as it were, the front door of the whole colony.

By the time this system of locating lands had got well under way it was natural that nobody wanted a rear location, but that every one, on the contrary, desired to be near his neighbours on the common highway. Hence, when farms were partitioned among heirs, each heir insisted upon having not only an equal area but an equal share in the river frontage. The oblongs were thus divided and subdivided, but always in the original shape, until the holdings became mere ribbons of land with a frontage of a few linear arpents and a depth sometimes of a mile or more. This process was accelerated, moreover, by the operation of the French law of succession to real property, according to which all the children, male and female, took share and share alike in the inheritance of *en censive* lands. As large families were then as now the rule, an equal division among all the children soon shredded an estate into small strips.

As early as 1672 this phase of colonial development attracted the attention of the authorities, and Colbert instructed Governor Frontenac to suggest some means of arresting it, not so much, however, because he feared the ultimately detrimental effect of continued division upon agricultural progress as because he saw that the system weakened the defensive strength of the colony. Frontenac was apparently unable to suggest a remedy; but the intendant, Talon, undertook as an experiment the grouping of some of the incoming settlers in three new villages near Quebec. The colony, however, proceeded to develop as before; when the north shore of the river had been pretty well settled, the south shore began to get its proper share of occupants, who located themselves just as their neighbours had done. It was only after the river front on both sides was all taken up that settlers began to betake themselves to the lands back from the St. Lawrence.

Despite these various obstacles, the colony grew at a moderate rate during the closing years of the seventeenth century, its population in 1698 being slightly under fourteen thousand. This population was comfortably housed in over two thousand dwellings, and of the granted lands about thirty-seven thousand arpents had been cleared and were either under grain or in pasturage. During the year 1697 the colony produced over two hundred thousand bushels of grain and maintained more than ten thousand head of horned cattle. All this was evidence of a progress which, if it did not entirely fulfil the royal expectations, was, under the circumstances, not wholly discouraging. Not a tithe of the seigniories had been cleared, it is true, and in very few were the seigniorial dues a source of any substantial emolument to the seignior; but seigniorial lands were beginning to have a market value, and a spirit of land speculation was making its appearance. There were signs, moreover, that the seigniors in granting lands, were showing a disposition to stipulate for dues to which they

were not entitled, and in other ways to adopt practices detrimental to the best interests of the colony.

To some of the seigniorial practices which the colonial authorities regarded as harmful, the intendant Raudot called attention in a series of complaints made to the minister during the years 1707-8.¹ First of all he lamented that "a business spirit, which has always more of cunning and chicane in it than of truth and righteousness," had begun to find its way into the colony, where it was every day increasing its pernicious activities. One of the chief manifestations of this "business spirit," he said, was the apparent disposition of all classes of the people to take advantage of legal technicalities, and to become involved in lawsuits with one another on every possible occasion, a litigious disposition which the intendant deplored because it "disturbed the peace and quietness of the colony," and afforded the people too many opportunities for neglecting the proper cultivation of their lands. Pretexts for litigation there were in plenty; for, as Raudot pointed out, the notaries, bailiffs, and other officials who drew contracts, deeds, and other legal documents were for the most part men of meagre education, quite unskilled in the practice of conveyancing. Hence the records of dealings between the people were usually faulty; indeed, if one may trust the intendant's opinion, it was very rarely that any transaction was carried through in regular legal form. Rights acquired in good faith were thus placed upon a precarious basis; for, as Raudot expressed it, there was "no property the possessor of which might not be disturbed, no widow whose dower rights might not be infringed, and no guardian against whom a lawsuit might not be maintained with reference to the accounts of his guardianship." The main cause of this chaotic condition of affairs, the existence of which gave the authorities good ground

¹ Memoir of Jacques Raudot, Intendant, to M. de Pontchartrain, Minister of Marine, on the Growth of Seigniorial Abuses in Canada, November 10, 1707, *printed below*, pp. 70-80.

for misgivings, was to be found, as the intendant took care to point out, not in any defective sense of common honesty—for business dealings were accomplished and recorded, he thought, in entirely good faith—but in the general ignorance of the parties to transactions and their failure to observe the legal rules. So lax, indeed, he said, was their observance of the most elementary points of law that he believed, were their litigious spirit given free rein, there would soon be in the colony more lawsuits than persons. It was for this reason that, in settling questions concerning the rights of landholders, the intendant thought it well to deal with cases on their individual merits and not in accordance with the strict rules of jurisprudence.

It seemed desirable, however, that the pretexts for litigation should be diminished; and to this end the intendant proposed that the king should issue a decree validating the land titles of all who could show five years' continuous possession. Such a decree, he further suggested, would be the more effective if his Majesty would instruct the royal judges not to hear causes which might be brought before them upon mere technicalities. "It is only thus, my Lord," he added, "that you can establish peace and quietness in this country, which, without this just precaution, will always be unhappy and unable to increase its population; for men ought to attend to the cultivation of their lands without being daily obliged to leave them in order to make defence against persecution." Since assuming the intendency, Raudot went on to declare, there had been scarcely a day when he had not been called upon to deal with cases which, if a proper spirit of fairness had prevailed among neighbours, would never have arisen.

In emphasising the litigious character of the population of New France, Raudot drew attention to a point which several other royal officials had not allowed to pass unnoticed—which even Talon had commented upon a quarter century

previously, and which in the closing years of the French dominion seemed to have lost little of its strength—namely, the fact that the Norman colonist showed an ardour in all that concerned his own petty private interests which was matched only by his rare indifference to all that concerned the welfare of the colony as a whole. Moreover, the haphazard fashion in which land boundaries were delimited, and the indefinite nature of some of his seigniorial obligations, afforded him plenty of pretexts for squabbling both with his seignior and with his fellow habitants; and the long winters set his idle hands free for mischief. Furthermore, the royal courts were so easy of access and the fees exacted so small that the people resorted to law more freely than they would have done in France, where justice was dispensed less readily and less cheaply.

Passing from general to specific abuses, the intendant called attention to the fact that many of the settlers had on their arrival taken locations at once, without obtaining from their seigniors any formal title-deeds. Some had made oral arrangements with the seigniors; others had accepted simple memoranda, which stated the location of their farms, but said nothing about the dues and services payable to the seigniors. "Hence," declared Raudot, "a great abuse has arisen, which is that the habitants who have worked their farms without a safe title have been subjected to heavy rents and dues, the seigniors refusing to grant them regular deeds except on such conditions, and these conditions they find themselves obliged to accept because otherwise they will have their labour for nothing. One consequence of this is that in almost all the seigniories the dues are different; some pay in one way, some in another, according to the different demands of the seigniors by whom the grants have been made."

Neglect to deal fairly with settlers in the matter of granting proper title-deeds was not, however, the only count in

the indictment which Raudot at this time framed against the seigniors of New France. Various other sharp practices were apparently resorted to in order that the seigniorial emoluments might be increased. Thus, it had become the policy of some seigniors, the intendant complained, to exact from their dependants dues and services for which the Custom of Paris afforded no warrant. As the average immigrant to New France was as well versed in the Code of Hammurabi as in the Custom of Paris, he was too ready to accept terms from the seignior which the authorities properly regarded as extortionate and calculated to deter settlers from coming to the colony. Many of the seigniors, for example, had taken occasion to insert in their land titles "a *retrait roturier* of which no mention was made in the Custom of Paris," and which permitted the seignior, when a habitant sold his farm, to step in and take it over to himself at the sale price—a proceeding which, the intendant declared, had served to shackle land transfers. Again, it was customary for many seigniors to stipulate that the annual *rentes* due by the habitants should be paid either in cash or in produce at the option of the seignior, who when prices were low called for money payments, but when prices were high insisted upon receiving their dues in produce. This practice, Raudot declared, was attended with great hardship to the habitants, particularly when the seigniors demanded their payments in money at short notice. It was true, indeed, that the annual *rentes* amounted to but a few francs; but money was so scarce in the colony that the habitants frequently found even small sums difficult to obtain.

Still another seigniorial practice against which the intendant lodged a vigorous protest was the custom of stipulating, in title-deeds granted to settlers, that the latter should bake all their bread in the seignior's oven (*four banal*), paying, of course, a fixed toll for the privilege. The obligation of bake-oven banality was, he admitted, very commonly im-

posed in France; but the absurdity of any attempt to impose and enforce it in a struggling colony, where dwellings were situated often several miles distant from the manor-house, scarcely needed emphasis. It was the intendant's opinion, indeed, that the seigniors of New France had no intention of enforcing the obligation, but that they stipulated for it in the deeds merely in order that they might, at some future time, use it as a pretext for an additional money payment in commutation of the seignior's rights.

In conclusion, Raudot suggested that the king should issue a general edict designed to secure the elimination of the various abuses mentioned in the despatch. This decree, it was urged, should fix definitely the amount of cens et rentes which each dependant should annually pay his seignior, and should provide that this payment be fixed uniformly throughout all the seigniories of the colony. The rate suggested was "one sou and one fowl for every lineal arpent of frontage," or, if the habitant chose to pay entirely in money, twenty sous annually per arpent frontage; but the option in this matter ought, in Raudot's opinion, to rest with the habitant and not with the seignior. He requested, furthermore, that the decree should suppress entirely the right of retrait roturier, or seigniorial pre-emption; that it should forbid seigniors to stipulate for the exaction of the oven right; that it should restrict their fishing right (*droit de pêche*) to the privilege of exacting one fish in every ten caught by the habitant; and that it should deprive those who did not proceed with the erection of grist mills by the expiration of a year from the date of the proposed decree of their right to exact the obligation of mill banality. With reference to the last-named right, the intendant took occasion to point out that, some twenty years previously, a decree had been issued making precisely the provision now suggested.¹ When this

¹ Royal Arrêt concerning Seigniorial Mills, June 4, 1686, *printed below*, pp. 61-62.

decree reached Quebec, however, he said, it had been promptly pigeon-holed by the attorney-general and his colleagues of the Superior Council because they thought it detrimental to their own interests as seigniors to allow the provisions of the edict to become generally known. "It is thus," the despatch significantly concludes, "that the king is obeyed in this colony, where, I can assure you, the interests alike of the king and of the general public would be entirely sacrificed to the designs of private individuals if they were not constantly guarded."

Raudot's lengthy despatch sheds more light upon the workings of the seigniorial system in the early years of the eighteenth century than can be secured from any other contemporary source, with the exception of Catalogne's elaborate report of a few years later. Its zealous author was one of the ablest and most public-spirited of the various intendants whom the king sent out to New France to exercise supervision over the "justice, police, and finance" of the colony; and his observations concerning the progress of the seigniorial system are, therefore, worthy of careful attention. Himself a man of the people, he naturally, perhaps, leaned somewhat to the side of the habitant; and there are some reasons for thinking that his general accusations of seigniorial avarice were not wholly warranted by contemporary conditions. His conjectures concerning the ultimate purposes of those seigniors who stipulated for the obligation of oven banality were shown by later developments to have been entirely without basis; and his generalisation, based upon a single instance, that the members of the Superior Council evaded the royal commands whenever their private interests so dictated, was not only gratuitous but unfair. With the instincts of repression that were so abundantly characteristic of officialdom during the old régime, Raudot deplored the appearance in the colony of a "business spirit," and lamented the tendency of the people to depart from that "simplicity which prevailed here

2/3/08

HISTORICAL INTRODUCTION

xlix

formerly"; whereas it was rather the misfortune of New France that from first to last she possessed too little of the business spirit, too little of the spirit of initiative, spontaneity, and enterprise which characterised the people of the New England colonies. In thorough consonance with the intendant's martinet methods was his well-intentioned proposal that all seigniorial dues in the colony should be reduced to the same level, with no allowance for differences in the location or the quality of lands. The hand of authority, already thrust almost everywhere into the private relations of the people, should now venture to determine the monetary considerations of contracts to the fraction of a sou! Perhaps it would be well for those who desire to pass fair judgment upon Canadian seigniorialism in the opening decade of the eighteenth century not to accept Raudot's rehearsal of seigniorial abuses without reasonable reservations.

The intendant's complaints received due attention in Paris. In the following spring the Minister of Marine, M. de Pontchartrain, made reply that he "had been much pained to see the irregularities with which everything" had hitherto been done in the colony, and that he fully recognised the evils which would result if the disorganised state of affairs were permitted to continue, but that, since the decree asked for by the intendant would be so radical in its provisions, he deemed it the part of wisdom to proceed slowly. He therefore asked the intendant for more information, and requested him to send a memorandum setting forth more definitely the precise regulations which ought to be inserted in the proposed arrêt. Some of the alleged abuses, the minister suggested, might be remedied by the enforcement of decrees already issued; the decree of 1686, for example, had covered the whole matter of seigniorial banalities.¹

¹ Despatch of M. de Pontchartrain, Minister of Marine, to Jacques Raudot, Intendant, concerning Seigniorial Abuses and the Administration of Justice in Canada, June 13, 1708, *printed below*, pp. 80-81.

In the meantime Pontchartrain transmitted Raudot's letter to two eminent Parisian lawyers, Messrs. Deshaguais and Daguesseau, with a request that they join in drafting a decree which would be effective in the directions pointed out by Raudot, and which would, among other things, "fix the dues and rents of seigniors as well for the past as for the future."¹ This action of the minister gives evidence that matters affecting the development of the seigniorial system in New France were not dealt with in any hasty or ill-considered fashion, and that in framing regulations for promulgation in the colony the best legal talent in France was sometimes called into service. This point deserves more than a passing remark, for historians have been too ready to regard the colonial decrees of Louis XIV. as the crude expressions of monarchical caprice. If, however, many of these decrees, perhaps most of them, did not bear the marks of that omniscience which Bourbon paternalism assumed to possess, it was not because either the king or his ministers treated the administration of colonial affairs lightly or without painstaking care.

In the autumn of 1708 the minister received from Raudot the information and memorandum asked for some months earlier. These were sent together; but one of the documents, which evidently contained a statement showing the wide variations in seigniorial exactions throughout the colony, is not now to be found among the papers in the Ministry of Colonies at Paris, and there is nothing from which we may draw any information concerning its contents other than the knowledge than it was at the time regarded as proving the intendant's allegation that the dues exacted from habitants varied greatly in different parts of New France. In the other paper Raudot reiterated the complaints which he had made in

¹ Memoranda of M. de Pontchartrain, Minister of Marine, to Messieurs Deshaguais and Daguesseau, concerning the Royal Edict or Declaration desired by Raudot for the Reform of Seigniorial Abuses, July 10, 1708, *printed below*, pp. 82, 83.

the preceding year, and gave some additional details.¹ He laid emphasis again upon the fact that many settlers in the colony had no protection from their seigniors in the way of written deeds setting forth the limits of their obligations, and added that some who had received regular deeds had lost them, and now desired to be relieved of the logical outcome of their own carelessness. To make matters worse, he said, the Indian wars had caused many of the habitants to abandon their lands temporarily, and these were now estopped from claiming the prescriptive rights ordinarily arising from continuous possession. It was therefore very desirable, the intendant thought, that possession of lands for a short term—say of five years—should be deemed a conclusive proof of ownership in all cases in which the holder had no proper legal document as evidence of his title.

With reference to his former suggestion that all seigniorial dues should be reduced to the same plane, Raudot called attention to the marked increase which had taken place in these dues during recent years, as compared with the rates current "in innocent times when people did not so much seek their own advantages." Since settlers who came to New France in the first decade of the eighteenth century had to pay much higher rates for locations than were exacted from those who were fortunate enough to arrive in earlier years, he thought it highly desirable, in the interest of incentives to immigration, that the royal authority should be invoked to put the general level of seigniorial dues back upon the old plane. It is greatly to be regretted that the statement of existing rates transmitted by Raudot along with this despatch has not been preserved, for the data which it presumably contained are not to be had from any other reliable source. That there had been a substantial rise in the rate of seigniorial

¹ Despatch of Jacques Raudot, Intendant, to M. de Pontchartrain, Minister of Marine, containing a further Discussion of Seigniorial Abuses, October 18, 1708, *printed below*, pp. 85-87.

dues during the latter part of the seventeenth century is extremely probable, not alone in view of the intendant's positive assertion, but because, as more and more land was taken up, choice locations became more scarce and commanded better terms.

In a further discussion of the seigniorial oven right Raudot called the minister's attention to the fact that the arrêt of 1686 had dealt with the question of seigniorial mill rights only and had no proper application to the matter of oven banality. Indeed, it would be highly unwise, he thought, to deal with these two rights in the same fashion. The seigniorial mill, he claimed, was "always to the advantage of the habitants, who do not possess the means of erecting these mills themselves"; but the seigniorial oven could never be of any service to the people, for no matter where it might happen to be erected, it would be too far away from the dwellings of most of the settlers in the seignior. To compel the habitants to use it would, therefore, be to make baking inconvenient for them at all seasons, and fairly impossible during the long winters, "as their dough would be frozen before it would reach the place where the oven was situated." What Raudot desired was that the seigniors should be forced to build mills whether they found it profitable to do so or not, but that they should be forbidden to erect ovens under any circumstances—an attitude on the part of the intendant that deserves comment as disclosing the utilitarian basis upon which, in the opinion of the colonial authorities, the seigniorial prerogatives were deemed to rest. To Raudot the fundamental question was not whether certain seigniorial rights had or had not a legal basis; for, as a matter of fact, the seignior had just as ample legal authority for the exaction of oven tolls as for that of grist tolls. The question was simply whether this or that seigniorial exaction was or was not repugnant to the best interests of the colony in general. The Canadian seignior of the old régime was not regarded as possessing, in his seigniorial prerogatives, any right of property which might be impaired only

with due compensation; it was not until after the British conquest that his privileges came to be looked upon as vested rights.

Differences between the seigniors and their dependants as to the nature and extent of seigniorial privileges were not, however, the only contentions which characterised the progress of seigniorialism during these years. The broad contest between the governor and the bishop in New France, the interminable dissensions between the higher civil and ecclesiastical authorities, all reflected themselves in frequent disagreements between the curés and the seigniors. In the main, however, the relations between these two local magnates were close and friendly, the curé often making his home at the manor-house, which thus became the centre of the religious as well as of the social activities of the seignior. The church of the parish or seignior—for the bounds of the two were usually the same—also played its rôle in the general seigniorial drama; for here it was that, at the close of the mass, all important secular announcements affecting the habitants were made. At its door the seignior was accustomed, each autumn, to call formally upon his dependants to remember the approaching festival of St. Martin, when their annual rents would be due and payable; and in the same place the local captain of the militia posted copies of the royal ordinances and edicts when these arrived from the hands of the intendant at Quebec. Within the church, furthermore, the seignior was, by ancient custom, entitled to various honorary privileges which were not accorded to ordinary laymen, and these he frequently insisted upon with an exactness which engendered friction between himself and the local curé. It was to put an end to such unseemly local broils that the colonial authorities in 1709 issued an ordinance which undertook to regulate, even in the minutest details, the precise honours to which a seignior was entitled in the seigniorial church.¹ For his use

¹ Ordinance defining the Honours to be accorded Seigniors in Seigniorial Churches, July 8, 1709, *printed below*, pp. 88-90.

and occupancy a fixed pew, of the same length as the other pews and not more than double the depth, was to be built on the right side of the main entrance to the church four feet from the altar railing. In all the religious processions the seignior was to take precedence immediately after the curé, and at all the special services his rank was to receive due recognition. One after another his various honours were enumerated with unusual explicitness, in order that no misunderstandings should arise in future.

But to return to the complaints of Raudot. It will be remembered that Pontchartrain, while awaiting further information from Quebec, had commissioned two Parisian jurists to draw up "at their leisure" the edict which Raudot had requested. This draft, however, was not promptly forthcoming; in fact, the only copy of it which has come down to us bears the date of May, 1717, and contains intrinsic evidence that it was not prepared until after 1711 at least.¹ It is possible that an earlier draft, not extant, was presented to the minister; but if so it never received the approval of the authorities. It may be, that either Pontchartrain or the king regarded Raudot's programme as too radical; but, be this as it may, the authorities proceeded to remedy the main evils according to their own methods. In the opinion of His Majesty, the fundamental cause of seigniorial abuses was the "business spirit" of which Raudot had complained—in other words, the practice of holding seigniorial lands for a speculative rise in value. Having become possessed by free royal grant of extensive tracts, fertile and well-located, too many of the seigniors spent their energies in haggling with every new settler as to the amount of bonus (*prix d'entrée*) which the latter should pay for his farm. This practice the royal authorities regarded as highly detrimental

¹ Draft of an Arrêt prepared by Messieurs Deshaguais and Daguesseau, for annulling all Title-deeds containing Conditions contrary to the Custom of Paris, May, 1717, *printed below*, pp. 157-160.

to the best interests of the colony, for they expected the seigniors to offer inducements to settlers instead of putting obstacles in their way. By the issue of the famous Arrêts of Marly, therefore, the home government sought to dictate a change in the attitude of colonial seigniors.¹

The preamble of the first of the two arrêts states the royal view of the situation very succinctly. "The king having been informed," it runs, "that among the tracts of land which His Majesty has been pleased to grant and to concede *en seigneurie* to his subjects in New France, there are some which have not been entirely settled, and others upon which there are as yet no settlers to bring them into a state of cultivation, and upon which also those to whom they have been conceded in seigniorship have not yet begun to make clearings for the purpose of establishing their domain thereon; and His Majesty being also informed that there are some seigniors who refuse, under various pretexts, to concede lands to settlers who apply to them, preferring rather the hope of selling them and at the same time obtaining the customary dues, all of which is entirely contrary to His Majesty's intentions, and to the clauses and conditions of the seigniorial title-deeds by which they are permitted to grant lands only at an annual ground rent, the whole practice being very unfair to incoming settlers who thus find land less open to free settlement in locations best adapted for trade,"—in view of all this, it is therefore enacted that, "within the space of one year from the date upon which the present decree shall be published, the inhabitants of New France, to whom His Majesty has granted lands in seigniorship and who have no territories uncleared and no settlers on their seigniorships, shall be held to place settlers thereon, in default of which the said lands shall be re-annexed to His Majesty's domain." It was furthermore ordered that seigniors should "concede to settlers the lots of land" which the latter might "demand

¹ Arrêts of Marly, July 6, 1711, *printed below*, pp. 91-94.

of them in their seigniories, at a ground rent, and without exacting any bonus as a consideration for such concessions."

In default of such action on the part of the seignior, the edict permitted settlers to make application to the royal authorities at Quebec, who were empowered to make the desired grant directly, the dues in such case to go to the royal treasury and not to the avaricious seignior.

By the terms of this arrêt the position of the Canadian seignior with respect to his ungranted lands was completely changed. Down to 1711 he had been legally free to allot or to hold his lands as he chose; he now became, in the eyes of the law, little more than a land-granting agent of the crown, a trustee holding lands for incoming settlers and required to grant them at customary rates of dues and services. In the language of the jurist, he lost his *dominium plenum* in the lands and became a *fideicommis* of his sovereign. The provisions of the arrêt thus differentiated the seigniorial system in Canada from its prototype at home, for in France a seignior was under no legal obligation to subinfeudate his fief; on the contrary, the Custom of Paris allowed subinfeudation only to the extent of two-thirds of the area of a seigniory, and even this it permitted only under certain restrictions. In regard to New France, however, the action of the royal authorities was dictated by their desire to adapt the seigniorial system to the needs of a new colony into which settlers came at best so slowly that it behoved the king to see that no unnecessary hindrances were placed in their path. The first arrêt of Marly is, therefore, of high importance in the history of Canadian feudalism, for it forms the basis of the *jeu de fief*, an incident peculiar to the system as it developed in the colony but never characteristic of seigniorialism at home.

The second arrêt of Marly, which bears the same date as the first, testifies to His Majesty's conviction that the seigniors of Canada were not the only ones to blame for the

tardiness of colonial development, but that the people as a whole had failed to put forth their best efforts. "The king being informed," runs the preamble of this edict, "that there are lands conceded to the habitants of New France which are neither settled nor cleared, but on which the habitants content themselves with cutting down some trees," thinking by this means to secure themselves a right of property, His Majesty could not but look upon this attitude as highly prejudicial to the best interests of the colony, in that it prevented more industrious settlers from securing the lands and bringing them under cultivation. It was His Majesty's desire, as the decree expressly stated, that no habitant should be permitted to hold lands which he did not clear and develop; hence it was ordered that unimproved lands should, on the expiration of a year, be taken away from the grantees and reunited to the seigniorial domain. This forfeiture was to be decreed by the intendant upon the production of certificates signed by the local curé and the captain of the militia.

The two arrêts of Marly supplement each other, the one being designed to protect the interests of the crown against apathy on the part of the seigniors, the other to stir up those habitants who were not disposed to help the seignior in fulfilling his responsibilities. In a word, the seigniors were now forced by law to show some zeal in getting settlers for their lands, and were at the same time provided with a means of spurring these settlers to activity. Indeed, if the provisions of the two decrees had been enforced to the letter, the shores of the St. Lawrence would have undergone a remarkable transformation in the course of a single twelvemonth, or else half the landholders of the colony would have lost their properties. As a matter of fact, however, the provisions of the first arrêt were treated with almost entire disregard. Catalogne's elaborate report of a year later shows that many seigniories had very few settlers, others none at all; and yet, with a single exception, not one of these was declared

forfeited in accordance with the terms of the decree. The seigniors apparently continued to exact from newcomers sums which were quite in excess of the customary rates, but which they found applicants quite willing to pay. Occasionally, to be sure, settlers refused the proffered terms and appealed to the intendant for grants, as the decree permitted them to do; but such procedure was extremely uncommon. With respect to the provisions of the second arrêt the case was somewhat different, for here the initiative in the matter of enforcement was given to the seigniors and not to the authorities. When settlers showed tardiness in clearing their farms, the threat of forfeiture was effectively used, and was sometimes carried into action. During the twenty years following 1711, over two hundred farms were re-annexed to seigniorial territories by decrees of the intendant, the seigniors in each case presenting the necessary evidence that the lands had not been promptly cleared and cultivated.

Still, it would be hardly fair to assert that the first arrêt accomplished nothing. Although the colonial authorities did not enforce its provisions to the extent of revoking seigniorial grants which should properly have been forfeited, it is unquestionable that many seigniors bestirred themselves to action lest the machinery of coercion should be set in motion. At any rate, the area of cleared lands nearly doubled during the decade following 1711, despite the fact that the number of new settlers during this period was not large.

At this point one may properly take a general view of the seigniorial system in Canada; for by the close of the first decade of the eighteenth century it was entering upon its more mature stage. It is, moreover, in this era that one encounters, in the report of a French engineer, Gédéon de Catologne, the only trustworthy and comprehensive description of the seigniories which the whole mass of documentary data relating to New France seems to include; for not till after the conquest was any similar description of all the

seigniories again undertaken. At the request of the intendant, Catalogne prepared, and in 1712 presented, an elaborate report on the location, ownership, development, and resources of all the seigniorial holdings in Canada, a work for which he equipped himself by visiting every seigniority in the colony and thus gaining his information at first hand. This report, which was accompanied by three accurate maps of the seigniorial lands in the districts of Montreal, Three Rivers, and Quebec, was designed to give the home authorities "as thorough a knowledge of Canada as was possessed by those who had lived in the colony for many years."¹

It may well be doubted whether any one save Catalogne had at any time during the French régime a personal knowledge of conditions in every seigniority of the colony; indeed, it is extremely unlikely that any official had ever even visited them all. When one remembers, therefore, that Catalogne's report is the work of a trained engineer who wrote from personal inspection, and whose capability of careful observation is amply evidenced in his other writings, the value of the document becomes obvious. At the same time, the report has its inherent failings. It is mainly topographical; it deals with the resources of the various seigniories in terms which are for the most part too general to be of high service; and it gives us scarcely a word with reference to the actual working of the relations between the seigniors and their dependants. Much of its value arises from the simple fact that, while the information contained is elementary enough, it is such as cannot be obtained from any other trustworthy source. Such as it is, moreover, it seems to be entirely accurate; for a very careful comparison of the paper with data drawn from a variety of other sources has failed to disclose more than a few minor errors. Catalogne's style of writing, it is true,

¹ Report on the Seigniories and Settlements in the Districts of Quebec, Three Rivers, and Montreal, by Gédéon de Catalogne, Engineer, November 7, 1712, *printed below*, pp. 95-151.

leaves something to be desired ; but, on the other hand, the subject matter of the report afforded little scope for the exercise of literary qualities. With all due allowances, the document is of high value to those who desire to obtain an accurate idea of the progress which the colony had made during the first century of its colonisation by the French.

Beginning at the western end of the colony, at the confluence of the St. Lawrence with the Ottawa, the report takes the reader eastward to the Gulf, passing through some ninety seigniorial properties in all, which are described with a degree of fullness varying with the importance of the seigniories. In each case the report sets forth the location and extent of the tract, the nature of its soil, and its adaptability to products of various sorts, the existence or the absence of natural resources in the way of mineral deposits, standing timber, or building materials ; the facilities for the development of fishing industries, the name and rank of the seignior, and the way in which he had come into possession of the lands, the extent to which the lands had been cleared and settled, the provisions made in each seigniority for religious services, and various other incidental data. Much of this information the authorities at Quebec had already on file in the form of *aveux et dénombremens* made by the various seigniors ; but, as much of it was not thus available, the work of Catalogne served not alone to verify the files which were already at hand, but to supplement them at many points.

The Island of Montreal, now the Canadian metropolis, but at this time the patrimony of the Seminary of St. Sulpice at Paris, was the first seigniority to engage the engineer's attention. This most important seigniorial property contained in its six parishes a population well in excess of 2000, and was even at this time reckoned among the most valuable seigniories of New France. Having brought the island from a howling wilderness to a prosperous town of 5000, the Paris seminary handed it over, in 1764, to its protégé the Seminary

of St. Sulpice at Montreal, by which a considerable portion of it continues to be held at the present day; for the lands of the seminary were excepted from the compulsory provisions of the Seigniorial Tenures Abolition Act of 1854. A large part of the original seigniori has been sold at various times, and is now held in free and common socage by private owners; but the seminary itself still ranks as one of the largest landowners in the province of Quebec. The neighbouring smaller Isle Jésus belonged to the Quebec seminary; but it had been so ruthlessly swept by Iroquois raids that it had now very few settlers, and was used mainly for the pasturage of cattle owned by the seminary. Just to the north-west lay the seigniori of Mille Isles, comprising the little archipelago of islets first granted to Captain Sidrac Dugué of the Régiment de Carignan-Salières. Dugué, however, with the characteristic improvidence of a soldier, had allowed the seigniori to slip from his hands into those of his creditors, and the property was at this time in the possession of Nicholas Dupré, a Montreal trader and money-lender. On the north shore of the St. Lawrence, just below these islands, were the seigniories of Lachenai and Repentigny or L'Assomption, both of them originally the property of Le Gardeur de Repentigny. Here, on a snowy November day in 1689, the redskins had left their trail of blood and pillage; here also, however, the Chevalier de Vaudreuil had taken effective revenge in 1691 by annihilating a band of forty Iroquois who had permitted themselves to fall into the Frenchman's well-laid trap.

Passing along the north shore of the river, the engineer described the spacious seigniori of St. Sulpice (also the patrimony of the Seminary at Montreal), and, off shore, the seigniori of Isles Bouchard, owned jointly by Captain Joseph Desjordy and the heirs of Jarret de Verchères. The marshy character of these islands, he said, had rendered them unattractive to settlers; but when placed under the plough the soil brought forth harvests abundantly. Flanking the seigniori

of St. Sulpice lay the fief of La Valterie, named from the deceased Margane de la Valterie, in his lifetime a lieutenant of the Carignans. With a soil only "ordinarily good," and the misfortune of having had earlier settlers decimated by the savages, this seigniority had managed to hold its own in the matter of development. The adjacent fiefs of Lanoraie and Derrière Dautré were held mainly by Jean-Baptiste Neveu, a Quebec merchant, who had given them little of his attention. Lanoraie contained but few settlers, not so much because its soil was poor, as because the mills were situated at long distances from the residences of the curé and the seignior. Derrière Dautré was without inhabitants, the Mohawks having laid it waste after massacring both the original seignior and his dependants. Passing by the adjoining fief of Dautré, originally one of the various properties of Jean Bourdon, first surveyor-general of New France, but now in the hands of Chorel de St. Romain, Catalogne reached the important military seigniority of Berthier-en-Haut, given originally to Lieutenant Raudin of the Carignan regiment, but shortly afterwards transferred to Alexandre Berthier. In 1712 it was held by the Sieur de Rigauville, who had married Berthier's widow. With its augmentations it formed one of the most extensive of the seigniorities, besides being excellently situated and possessing a fertile soil. In this seigniority, which marked the eastern limit of the district of Montreal on the north side of the river, substantial progress had been made, a large part of the lands having been parcelled out to settlers.

Proceeding along the south shore from Montreal eastward, Catalogne mentions first the fief of Isle Perrot, so called from the name of its original owner, a former governor of Montreal, but now in the hands of one Trottier, who was alike seignior and sole inhabitant of the island. On the mainland the fief of Châteauguay, once the property of the Lemoynes, gave new proof of Iroquois devastation. Hunting

the beaver and luring the salmon engaged the energies of its few inhabitants, few of whom showed any partiality for the steady toils of yeomanry. The adjoining tract, known as the Mission of Sault St. Louis, was held in mortmain by the Jesuits, who kept it as a reservation for the Christianised Indians under their care, a use to which it has been consecrated ever since. In Catalogne's time, as at all stages of redskin economy, the lands of the Mission were cultivated by the squaws, the braves preferring to occupy themselves "in hunting, fishing, and war." With this location as a base, however, both French and Indians carried on a considerable clandestine commerce with Albany. Alongside the Mission lay two more Jesuit fiefs, La Prairie and St. Lambert, both of which, like all other estates belonging to this order, were being steadily cleared and improved.

Largest in point of area, however, and most valuable among the south-shore seigniories in the district of Montreal, was the fief of Longueuil, now ranking as a barony. It was first settled by Charles Lemoyne, the son of a Dieppe innkeeper, and one of the earliest immigrants to the colony. At his death it passed to his eldest son, also Charles Lemoyne, who in 1700 was made first Baron de Longueuil by a patent setting forth in grateful terms the signal services which the seignior and his nine adventurous brothers had rendered their sovereign alike in peace and in war. The barony of Longueuil was at this time wearing an air of progress and prosperity. It had numerous inhabitants, who found the life of the yeoman made easy by the considerable sums which the baron had spent in draining and improving the lands for cultivation; and even at this stage in its development it was well provided with mills and churches, not to speak of the pretentious baronial château flanked by its four towers of solid masonry, which reminded the newcomer of the embattled castles of old Normandy. Here the seigniorial system was working out so logically in all its various phases that the

authorities never failed to point to Longueuil as giving substantial evidence of the steady march taken by New France along the path to power and opulence.

Eastward of Longueuil lay Tremblay, once the fief of René Gaultier de Varennes, but now the estate of his heirs. With the Isles Lamoureux, which were comprised within the tract, the fief maintained a fair quota of inhabitants, many of whom were now in a position to enjoy the fruits of their earlier industry. Varennes, Boucherville, Isle Ste. Thérèse, La Trinité, and Grandmaison, all seigniories of interest and importance, came in for their share of Catalogne's attention as he passed on to the well-known fief of Verchères, which, when the Carignans disbanded, had become the heritage of François Jarret de Verchères, one of the regiment's vigorous younger officers. Here again there were evidences of Iroquois maraudings, disastrous in the main, although on one notable occasion the seignior's young daughter had rallied the few available settlers and sent the redskins skulking back to the forests. The fiefs of Chicouanne (or Bellevue) and Boisseau (or Boisselière) occupied the extensive range of shore between Verchères and Contrecoeur, but had no inhabitants except their respective seigniorial proprietors. Antoine Pécody de Contrecoeur, captain in the Carignan-Salières, was the first seignior of the latter, but it was now in the hands of his son and son-in-law. Thus were the Carignan veterans making way for the first generation of their descendants. The adjoining fief of St. Ours was still held by one of the few remaining Carignan officers, Captain Quinson de St. Ours, on whom His Majesty had bestowed the bounty of an annual pension. St. Ours had not been a successful seignior. His seigniory had not held its place in the line of progress; for, according to the report, his dependants spent more time in squabbling among themselves than in making the land yield its increase.

Somewhat farther along the south shore, at a point where

28/3/08

HISTORICAL INTRODUCTION

lxv

the Richelieu drains the waters of Lake Champlain into the St. Lawrence, lay the extensive and historic fief of Sorel, originally chosen by the Carignan captain, Pierre de Saurel, as his share of the lands which the king had authorised the intendant to distribute among the officers of the regiment some forty years previously. Saurel had died without direct heirs, and his decease had been followed by prolonged litigation over the ownership of the seigniory; indeed, the outcome had not been reached when Catalogne visited the tract on his tour of investigation in 1711. For purposes of trade the location of the fief was one of the best in the colony; but its situation upon the main highway of communication with the south laid it open to Iroquois attack. In spite of its large area, therefore, and its fertile soil, the seigniory of Sorel was at this time sparsely settled; but later, when the place was strongly fortified and garrisoned, it speedily augmented its population, and before the close of the old régime it was one of the distinctly urban communities of the colony. Near by, in the St. Lawrence, was Isle Dupas, owned by the labourer, Jacques Brisset; and in the rear of Sorel, extending along the Richelieu, stretched the seigniory of Chambly, likewise one of the Carignan fiefs. Captain Philippe de Chambly had been its original owner; but he soon grew tired of the colonial environment and betook himself home to Europe, where he was, some time later, killed in the Italian wars. Thereupon the seigniory passed, through rather romantic channels, into the hands of young François Hertel, who became the progenitor of the notable family of Hertel de Chambly. As the fief lay in the centre of the danger zone, it possessed a stone fort in which a small garrison was maintained; but, despite the protection thus afforded, the number of inhabitants was small, for, as Catalogne remarked, the seignior had been very remiss in his attentions to the property. The Hertels, like many others of the colonial noblesse, found a congenial vocation in raiding the

border hamlets of New England, and were not easily moved to any zeal in beating their spears into ploughshares. To their success in errands of massacre and pillage the annals of Deerfield, Haverhill, and other colonial hamlets of Massachusetts bear harrowing testimony. How New England hated them let these records attest; for some of the reddest bloodstreaks in the pages of Puritan history mark the paths of these Canadian Hertels.

Concluding his outline of the seigniories comprised within the district of Montreal, Catalogne passes to a brief description of the fiefs in the district of Three Rivers, which extended on the north side of the river from Berthier-en-Haut to Ste. Anne des Grondines, and on the south shore from St. Jean-Deschaillons eastward to Yamaska. Several of the seigniorial properties in this district were of small importance, supporting but few inhabitants and remaining almost wholly unforested. Maskinongé and Rivière du Loup were held by merchants of Three Rivers, the intervening little fief of St. Jean standing in the name of the Ursulines, who as yet had given it none of their attention. Petit Yamachiche belonged to the widow of Boucher de Grand Pré, and the neighbouring fief of Grand Yamachiche to the brothers Le Sieur. An unnamed seigniory adjoining had been granted to the younger Boucher de Boucherville, by whom it was still held, though his forty years of tenure had not shamed him to the clearing of a single arpent. Still farther eastward and approaching the site of the present city of Three Rivers lay the fief of Pointe du Lac, or Tonnancour, the estate of the Godefroys de Tonnancour, with a single settler marking the limits of agricultural achievement. Bordering it was the Jesuit seigniory of Cap de la Magdelaine, possessing a sandy soil unfavourable for grain-raising but rich in iron ore. The character of the land compelled the inhabitants to fertilise the soil by scorching the stubble, and only by vigorous labours could it be made to yield remunerative harvests; but the

seigniory was well located, and in the course of time became very valuable. Passing by the uncleared fiefs of Lapierre and Arbre-à-la-Croix, both of which were arrière-fiefs, or sub-seigniories, and should not have been enumerated among the regular seigniorial properties, Catalogne mentions his own seigniory of Prairies Marsolet, which lay between the larger fiefs of Champlain and Batiscan. This tract of land the engineer had acquired through his wife, who was a granddaughter of Nicholas Marsolet, the first grantee, and one of the pioneer settlers of New France.

The seigniory of Champlain, owned by Desjordy de Cabanac, and its neighbour the fief of Batiscan, which was the patrimony of the Jesuits, both included large areas of excellent land, and had numerous settlers. Progress had also been made in the seigniories of Le Moine and Ste. Anne de la Pérade near by, the latter of which marked the eastward limits of the district of Three Rivers along the north shore. Across the river and a little to the westward the fief of Yamaska disclosed abundant resources very scantily developed, and beyond it lay the seigniories of St. François and Lussaudière, the former inhabited chiefly by domiciliated Abenakis Indians, the latter with no settlers at all—indeed, Catalogne could not even discover who its owner was at the time. Beyond St. Antoine, a small fief comprised within the parish limits of Three Rivers, extended the well-known seigniory of Nicolet, originally a Carignan allotment but now held by the family of Courval. Then came Godefroy, badly dismembered among the heirs of Godefroy de Linctot, and, farther on, the fief of Bécancourt, which, at the time of the report was in the hands of Pierre Robineau de Bécancourt, son of the Baron de Portneuf. The seigniory of Bequet, owned by Louis Lévrard, master gunner at Quebec, and that of Rivière du Chêne, owned by Pierre de St. Ours, bounded to the westward the district of Three Rivers on the south shore of the St. Lawrence.

Although the district of Québec was the first to be allotted in seigniories, the amount of progress that had been made here was not substantially greater than in the two other districts. On the north shore the fiefs of Grondines, La Chevrotière, and Eschambault occupied the river frontage from Ste. Anne de la Pérade in the barony of Portneuf, which had in 1681 been elevated from a simple seignior to the higher rank and dignity in order to mark the royal appreciation of its owner's services in the cause of colonial development. Unlike most of those to whom the king was kind, René Robineau de Bécancour, the recipient of the signal honour, was not a soldier, but his zeal in the promotion of the colony's economic interests had made him a worthy subject for his Majesty's praise. The fiefs of Jacques Cartier, Pointe aux Escureuils, Pointe aux Trembles, Demaure, Gaudarville, and Bonhomme, each claim a paragraph in Catalogne's description, which goes on to mention the historic seignior of Sillery with its four well-settled parishes. This fief, which bulks large in the earlier annals of the colony, was the frankalmoign of the Jesuits, who more than a half century before had located upon its fields the remnants of the Huron tribes after their territories by the Georgian Bay had been ravaged by the plundering Iroquois. Near by was the other valuable Jesuit fief of Notre Dame des Anges, one of the very earliest of the seigniorial grants, and the one on which Talon had established his three small villages of settlers sent out by the king from France. The soil of this seignior Catalogne found to be of the most excellent quality, "producing abundantly all sorts of grain, vegetables, and fruits." Part of the tract was used as a landing base by the Phipps expedition in 1690, when its leader summoned the Great Ononchio to capitulation and was given answer through the cannon's mouth.

One of the most interesting fiefs was that of Beauport, destined to loom up prominently in the days when Montcalm

held Wolfe at bay along the Beauport shore. This was the first seigniory granted by the Company of One Hundred Associates, and its first holder was Robert Giffard, a Percheronne, who had come to the colony in its swaddling days. Giffard gave the best years of his life to the improvement of his property, and the results entirely justified his zeal. Around him gathered scores of settlers brought out from Perche by his own efforts, to whom he was affectionately known as the Marquis de Beauport, although no rank in the noblesse had ever been conferred upon him. Giffard died in 1668, and in Catalogne's time the fief was held by his heirs, the family of Juchereau Duchesnay. Near Beauport was Cap Tourmente, originally the property of the Huguenot trader Guillaume de Caën, but now in the hands of the Quebec Seminary, which also held the neighbouring fiefs of Baye St. Paul and Isle aux Coudres. Off shore lay the spacious Island of Orleans, once the property of Bishop Laval, but exchanged by him for a fief at Montreal, and at this time owned by François Berthelot. More than thirty years prior to the date of the report the king had elevated this fief to the rank of a countship, and since that time Berthelot had borne the title of Comte de St. Laurent. Catalogne notes that in his day the inhabitants of the island busied themselves in the domestic manufacture of *étoffes* and crude cloth, which they sold in large quantities. It was a very large seigniory and contained five parishes, all of which were provided with religious care by priests of the Seminary at Quebec.

To the south-west, on the mainland, lay the fief of Lotbinière, the seat of the well-known family of the Chartiers de Lotbinière, in whose hands it remained through all the vicissitudes of the colony down to the abolition of the seigniorial system. Le Platon de la Sainte-Croix was held by the Ursulines of Quebec, and the fiefs of Charest and Maranda by the labouring seigniors whose names they bore. Short paragraphs of the report suffice for several other seigniories of

the Quebec district, among them those of Villieu, Lauzon, Mont-à-Peine, Beaumont, Durantaye, Bellechasse, Rivière du Sud, Bernier, Cagné, Vincelot, Bélanger, and Dutarte. These with the seigniories of Grande Ance, Isle aux Oyes, Isle aux Grues, Rivière Ouelle, Kamouraska, and Pointe aux Alouettes complete Catalogne's list; but two or three more which are not described in the main body of the report, among them Gentilly and Lingtot, are mentioned in its closing pages.

In summarising the results of his investigations and making suggestions for expediting the agricultural progress of the colony, Catalogne commented first of all upon the scarcity of labour in New France. So much land had been granted that four times the amount of available labour would not suffice, he thought, to bring it into cultivable shape in any reasonable time. The methods of cultivation were so slovenly and crude, moreover, that, although the soil of the colony was not lacking in fertility, the harvests compared very unfavourably with those obtained in France. In a word, there was not a sufficient quantity of land under cultivation, and what there was did not yield its proper increase. Again, in view of the shortness of the working season in New France, and of the fact that bad weather not infrequently further diminished this period, the Church authorities were unreasonable, Catalogne thought, not to permit the people to work upon the holy days. So numerous, indeed, were these that during the whole agricultural season, from May to the end of September, the average habitant did not get more than ninety clear working days. During this brief period, less than one-fourth of the year, he had to provide his whole annual subsistence.

But the curse of Canadian agricultural interests, as noted not only by Catalogne but by every other observer of conditions under the French rule, was the seductive charm of the fur traffic. The settlers seemed to be always ready to leave

their farms and betake themselves to the forests, often losing the whole agricultural season for the sake of making a few dollars in the operations of trade. It has been the custom of many writers, including even the gifted Parkman, to comment rather harshly upon the absence of individual enterprise and initiative which seemed to characterise New France throughout the old régime, a feature which they have set in striking contrast with the economic vigour and aggressiveness displayed during the same epoch by the New England colonies to the south. In the long conflict between Gaul and Albion, the inherent superiority of the latter in point of moral stamina, masculinity, and economic aggressiveness inevitably determined the ultimate issue; but such an explanation of the fall of New France overlooks too readily one very awkward but no less important historical fact—namely, that the Canadians of the French era were overwhelmingly of Norman stock. Now, the Norman of the seventeenth and eighteenth centuries was not a typical product of Gallic civilisation; indeed, between him and the Teutonic settlers of New England no very great racial gulf was fixed. The blood of the conquering Norsemen still flowed vigorously in his veins, and showed itself in his unquenchable love of the forest life and his lust for plundering raids. He roved the wilderness as his ancestors had roved the Seven Seas, and with the same daring and persistence. Unstable as water, he did not excel in the arts of peace; but his lack of excellence is not attributable to any inherent dearth of masculinity characteristic of his race. Indeed, if the Norman race has lacked the qualities of physical or moral virility, the chronicles of France, of England, and of Sicily have certainly borne false witness. It was not the lack of these qualities, but the exuberance of them, that rendered the Norman habitant open to Catalogne's strictures.

Although the cultivation of grain and vegetables had, as the report showed, made encouraging if not remarkable progress, Catalogne thought it well to emphasise the desirability

of insisting that the habitants should devote more attention to the cultivation of flax and hemp, products which he thought could be raised in the country with excellent results. He also complained that the settlers kept themselves poor by maintaining too many horses. In a country where forage and equipages were alike expensive, every habitant, however poor, he said, thought it necessary to keep some horses, which might, of course, be used to advantage in the processes of agriculture during perhaps four months of the year, but which could do little but eat their heads off during the long winters. The people should be encouraged to keep horned cattle instead, he suggested ; for the maintenance of a single horse cost as much as that of two steers, and the latter could be sold for a much larger sum.

To some extent, Catalogne thought, the seigniors were to blame for the existence of many inconveniences with which their dependants had to contend. Some of these might be removed, he believed, if the seigniorial proprietors were obliged to set aside parts of their ungranted domain to be freely used by the habitants for the pasturage of their cattle, and if they could be compelled to provide grist-mills to which the people might conveniently bring their grain ; for as matters stood, the habitants sometimes had to cart their grain forty or fifty miles before they could reach the nearest mill. He further suggested that, when lands were given to incoming settlers, no seigniorial dues of any kind should be exacted for the first six years—a recommendation which various other royal officials had made, but which seems never to have met with favourable consideration at Versailles.

One of the chief hindrances to the proper movement of population into some of the outlying seigniories, Catalogne found in the lack of means of communication between different parts of the colony. He therefore proposed that the chief road supervisor (*grand voyer*) should be instructed to proceed with greater vigour in the construction of roads and

bridges. Another of his suggestions looked toward the erection of granaries at different points, so that grain might be held over from one year to another, and alternate gluts and scarcities be prevented. Thus the price of wheat in the colony might be kept from pursuing the antics of a jack-in-the-box. Though Catalogne can scarcely be termed a reactionary in his economic views, he seems to have been impressed also by the "spirit of cunning and chicane" which had brought forth the rebukes of Raudot some five years previously; for he suggested that severe chastisement should be inflicted upon all who might hereafter be convicted of "fraud, bad faith, or imposture." Evidently the Norman was not slothful in business when it came to advancing his own interests by sinister methods. Catalogne hoped that the work of the notaries might also be so improved that less litigation would be possible; and he thought that some simplification of the judicial system might be brought about by the appointment, at the various colonial towns, of judge-consuls, who should have jurisdiction over commercial disputes. He further proposed that, since the navigation of the St. Lawrence was dangerous at all seasons, and since Canada did not possess a single competent pilot, a certain number of picked men should be trained in the art of pilotage, a step which would be well-timed now that shipbuilding was taking its place as a colonial industry. He also took occasion to commend as highly advantageous to the colony the practice of discharging soldiers from the regular garrisons whenever their terms of service expired, and of encouraging these to marry and become permanent settlers in New France.

On the matter of land boundaries Catalogne laid special stress. If his Majesty desires to "root out a hotbed of strife and bad feeling between the seigniors and their dependants," said he, "he will take measures to ensure peaceable possession to those settlers who have held their lands for long periods in good faith, and this without too much regard to the exact

boundaries as these may have been defined in the original title-deeds. As matters stood, Catalogne asserted, the whole question of land boundaries was in hopeless chaos; for, since the surveying had been done by unskilled persons, any attempt to adhere rigidly to the lines laid out would not only involve a victory of chicane over justice, but would in some cases encounter physical impossibilities. Catalogne was not the only writer who commented severely upon the haphazard way in which metes and bounds were set in New France, and upon the flood of ill-tempered controversy which had its origin in the methods of demarcation. The first surveyor-general of the colony, Jean Bourdon, came out to Quebec as a governor's valet; and when or where he received training in mathematics or surveying no one has ever been able to discover. If his map of the seigniories on the Lower St. Lawrence, prepared in 1641, be compared with the charts which accompanied Catalogne's report, the crudity and amateurism of his work are so apparent as to make one doubt whether the simple axioms of plane geometry were within Bourdon's fund of knowledge. To a man of Catalogne's engineering skill this cartographical chaos seemed intolerable; and he naturally insisted vigorously that it should not be permitted to operate to the disadvantage of property-holders who were in no wise responsible for its existence.

In addition to affairs of such general importance, many minor points obtained their share of Catalogne's attention. The practice of allowing cattle to run at large was censured, on the ground that it frequently resulted in damage to the crops, and was responsible for engendering a great deal of ill-feeling between neighbours. Habitants, he said, should be forced to fence their pastures. Again, since most of the streets in Montreal and Quebec were so full of boulders and mud-holes as to be impassable, it would be the part of wisdom, he thought, to set aside some funds for their im-^{provement}

provement. Still another point to which he called attention was the fact that too little deference was shown to the seigniors by their dependants. Ordinary habitants, he asserted, who happened to hold minor offices—local captains of the militia, for example—strutted about with an air of independence, and denied their seignior the respect which was his due. Such a difference in manners between New and Old France must have impressed a well-bred Frenchman of Catalogne's type; but he might have remembered that many of the Canadian seigniors were men who had risen from the ranks of labourers, traders, and the like—that comparatively few among their number had generations of noblesse behind them. Apart from the Carignan officers, indeed, the typical Canadian seigniors were men like Hébert, the former Paris apothecary; Lemoyne, the son of a Dieppe innkeeper; Noel, the Montreal carpenter; and Le Ber, the colonial fur-dealer, who had made in the Indian trade a fortune large enough to yield him repute as the richest man in the country. Of the eighty or ninety seigniorial properties named in Catalogne's report, no less than ten belonged to merchants and twelve to simple yeomen (*laboureurs*). Many of these seigniors, though sprung from the ranks of commoners, were sufficiently opulent to maintain a dignity consistent with their rank; more frequently, however, the seignior found it necessary to live and toil like his dependants, eking out a livelihood which gave to even the poorest habitant no reasonable basis for envy. Naturally enough, therefore, "the deference due by vassal to lord was not always accorded;" indeed, in the rigorous conditions of pioneer life in the New World there was little room for the frills of feudalism.

From first to last in the annals of New France the unremitting cry of officialdom was for settlers. From Talon to Bigot this was the burden of the intendant's annual memoir, the monotonous reiteration having on one occasion drawn from the home authorities the reminder that the king did not propose to people Canada by depopulating France. In

this hue and cry for immigrants Catalogne very cordially joined, his recommendation that the king should send out "all sorts of artisans" being perhaps a little less specific than most prior requests of a like nature. It was, indeed, with this appeal for more men, followed by a word in regard to the expensiveness of living in the colony, that he concluded his observations. #

When this elaborate memorial, with its excellent cartographical folios showing the location and extent of all the seigniories of the colony, reached the French authorities the seigniorial system had been well established in New France for upwards of half a century. In that time grants totalling several millions of arpents had been made; in fact, all the best locations on both shores of the St. Lawrence from Montreal to a point well below Quebec had been allotted, as well as all the best lands along the Richelieu. Of this extensive area not more than fifty thousand arpents, or somewhat less than twenty arpents per capita of population, were under cultivation when Catalogne made his inspection—a showing which must have convinced the royal advisers that the colonial authorities had been far too generous with the seigniors. Large tracts of land, given on the most favourable terms, had, as the report indicated, been held for more than a generation, and yet could muster but a single settler, and sometimes not even that. The whole brunt of agricultural development had been borne on the shoulders of comparatively few, the majority of the seigniors having shown a remissness which well deserved the royal censure. Manifestly, the memorial as a whole could not have impressed the minister as encouraging; hence it is not strange that, a few years later, definite orders were issued to the governor and intendant that no further seigniorial grants were to be made without the prior approval of the king. This decision appears to have been communicated to the governor of New France in June 1716; but, as the despatch has not been preserved, our know-

ledge of its contents is derived entirely from definite references to it in a later letter of instructions.¹ In accordance with these orders, no seigniories were allotted during the next decade, from 1717 to 1727.

Meanwhile the authorities bestirred themselves to secure more settlers for Canada and to improve the situation of those who were already established there. With this object in mind, Governor Vaudreuil in 1716 forwarded to the Duc d'Orléans, regent of the kingdom, a plan for increasing the population of Canada "without denuding the kingdom of useful citizens and without any expense to his Majesty."² He proposed that numbers of salt-smugglers who had been condemned to work on the galleys should be shipped out to New France and put to work on the lands; that five hundred of them, between the ages of fifteen and forty, be sent as a first instalment; and that the "farmers of the revenue" be made to bear the cost of transporting them to Quebec and of establishing them in the colony. The salt-smugglers were to be bound to service for a term of three years, and at the end of this time were to be allowed the privileges of free citizens in Canada without, however, having the right to return to France. Assurance was further given by the governor that, owing to the dearth of farm labour in Canada, the owners of lands would welcome this addition to the colonial population. Vaudreuil's proposals, however, do not seem to have found favour with the French authorities; for the colony was left, at least for the time being, to depend for its growth upon its natural increase from within, supplemented by such immigration of free settlers as might be induced to come from France.

About the same time, in 1717, the intendant Bégon drew

¹ Royal Instructions to Messieurs de Vaudreuil and Bégon concerning the Decision of the French Authorities to Grant no more Seigniories in Canada, May 23, 1719, *printed below*, pp. 160-162.

² Despatch of Governor Vaudreuil to His Royal Highness the Duc d'Orléans, Regent of France, asking that Salt-smugglers be sent to Canada to work the Lands, February 1716, *printed below*, pp. 151-153.

the attention of the Minister of Marine to various grievances of the colonial peasantry, upon whom many of the seigniors, despite the provisions of the Arrêts of Marly, apparently continued to make unreasonable demands. Some proprietors, according to Bégon, were exacting corvée or forced labour from their inhabitants, claiming it as a compensation for the use of the seigniorial domain as pasturage. Others had induced their dependants to help in clearing lands, upon the assurance that these tracts might be used for pasturage by all in common; but they had subsequently been unable to resist the temptation to sell the land for cultivation. Some seigniors were still enforcing the *droit de retrait roturier*, an exaction for which the Custom of Paris gave no warrant; others were reserving the wood on granted lands, and thus preventing the development of a trade in timber with France or with the West Indies; and some were exacting other rights in a manner which gave the intendant further ground for criticism.

To all of these complaints the home authorities made the usual answer that the existing laws ought to be better enforced; and this admonition they followed up, a few years later, with explicit instructions that the provisions of the Arrêts of Marly should be carried out to the letter.¹ To satisfy himself that this injunction was being complied with, the minister asked for regular statements showing how much land was being cleared; and in order to prepare these statements satisfactorily and accurately, the intendant called upon the seigniors to file their aveux et dénombremens. These documents were supposed to contain full information concerning the amount of land in each seignior, the amount that had been subgranted, the acreage that had been cleared, the number of habitants residing in the seignior, and the terms upon which lands had been granted to each, the number of buildings in the seignior, and various data re-

¹ Royal Instructions concerning the Enforcement of the Arrêts of Marly, December 19, 1721, *printed below*, pp. 166-167.

garding the amount of crops produced, the number of horses and horned cattle maintained, and much other information of a like nature.¹ With these statements as a basis, a *papier terrier*, or census, of the colony could be compiled at any time; but some of the seigniors were negligent in filing their returns, a fault, particularly on the part of the religious orders, which was made a matter of frequent complaint by the colonial authorities.

The various measures taken with a view to hastening the clearing of lands were evidently attended with some degree of success, for during the period 1720-1730 the cleared area more than doubled. Under the spur of rigorous ministerial instructions, lands were promptly taken away by official decree when sufficient energy was not shown by their holders. Forfeitures of seigniories were not frequent; but hundreds of *en censive* grants were revoked, and the general situation was so much improved that by 1727 the royal authorities yielded a point and permitted one new seigniorie to be given. Four years later, in 1731, the governor and intendant were again empowered to make grants whenever they deemed such action expedient; and from this time forward seigniorial concessions were made somewhat freely.

It is not to be supposed, however, that the change in royal policy was dictated by any assurance that all the abuses of the seigniorial system had been remedied; on the contrary, the colonial authorities were at this very moment reiterating their protests against the avaricious practices of the seigniors. In a joint despatch of October 10, 1730, Beauharnois and Hocquart drew the attention of the minister to the ways in which the seigniors managed to evade the law.² The practice

¹ Despatch of Messieurs de Vaudreuil and Bégon concerning the Nature and Scope of the Aveux et Dénombrements, October 14, 1723, *printed below*, pp. 167-168.

² Despatch of Messieurs de Beauharnois and Hocquart to the Minister with reference to the Reappearance of Seigniorial Abuses, October 10, 1730, *printed below*, pp. 169-172.

of land speculation had not been eliminated, they said ; for the habitants as well as the seigniors were interested in it to the neglect of their proper vocations. Since, however, it was the seigniors who encouraged their dependants to the practice—for the oftener the lands changed owners the oftener did the seigniors obtain their lods et ventes, or alienation fines—the colonial officials suggested that it would be wise to “issue a decree prohibiting seigniors and all other proprietors from selling unimproved lands under any pretext whatever.” It was true, indeed, that the arrêts of 1711 were designed to prevent this speculation ; but, as the writers of the despatch pointed out, the terms of these decrees were evaded in various ways. Many habitants, they said, had paid for their lands sums which they were under no legal obligation to pay, and, when they discovered their folly, clamoured so loudly for the recovery of their money that a torrent of lawsuits would inevitably have been the outcome had not the intendant insisted that people were supposed to know their rights under the law, and hence had only themselves to blame if they failed to insist upon them. *Volenti non fit injuria*, declared the intendant, was a sound maxim which ought not to be ruthlessly disregarded.

The spirit of speculation, it was suggested, doubtless had its basis in the plain fact that, all the better locations in the colony having been taken up, the margin of cultivation was being pushed out into regions less attractive. When the land along the river front had been cleared, the wild lands farther back had been much resorted to for supplies of timber and wood. Hence there had grown up, as the officials pointed out, an increasing demand for tracts in the “third and fourth ranges”—that is, in the regions some distance back from the water front. These lands, formerly without any monetary value at all, could now, they said, be disposed of profitably if the seigniors were permitted to consult only their own private interests. The authorities, however, contended that

such lands were not the patrimony of the seignior, to be sold or held for a further rise in value as he might deem fit, but that they were simply held in trust by him for settlers or for others who might make bona-fide applications for lands as homesteads. This was undoubtedly the royal view of the matter as set forth in the Arrêts of Marly; but, as the colonial officials asserted, the "mass of the habitants were not aware of the provisions of the decrees," although the arrêts had been duly promulgated at the accustomed times and places. That the people should have remained for twenty years so deficient in the knowledge of their rights, especially in a matter which so directly concerned them, is somewhat strange. The notaries, one might think, would have brought the law to their attention; but these officers seem to have been as ignorant as the class from which they were drawn. At any rate, the governor and intendant concluded their despatch with a request that a new and more stringent decree be issued dealing with the various abuses mentioned.

In response to this request, the royal authorities transmitted to the colony in 1732 the decree which is commonly known as the Arrêt of Versailles.¹ This edict, after reciting the fact that evasions of former ordinances had been brought to the king's attention, forbade the sale of uncleared lands, and made provision for the forfeiture to the crown, after two years, of all grants not then cleared. The governor and intendant of the colony duly acknowledged the receipt of the arrêt in the autumn of the same year, and reported that it had been published "in the towns and parishes of the country"; but they made no haste to enforce its provisions. The two years passed, scores of seigniories lay almost completely undeveloped, and yet no forfeitures were declared, though meantime the lands of habitants who did not conform to the law were in many cases re-annexed to the domains of

¹ Royal Arrêt ordering Seigniors to Cultivate their Lands and forbidding the Sale of Uncleared Lands, March 15, 1732, *printed below*, pp. 174-176.

their seigniors. On one occasion the officials announced to the home authorities that, under the terms of the royal decrees, they had permitted seigniors to re-enter and take possession of more than four hundred farms; but in the ten years following the issue of the Arrêt of Versailles not a single seigniorship seems to have been declared forfeited to the crown. Any movement in this direction appears to have been held in check for the time being by the dominating influence of seigniorial interests in the Superior Council of the colony. In fact it was not till 1741, when the demands of the minister became too insistent to be longer compromised, that the colonial authorities finally bestirred themselves to action and declared the forfeiture of twenty seigniorships in which little or no progress had been made.¹

This stroke would doubtless have been more effective than it was had not the governor and intendant restored several of these forfeited seigniorships to their former owners by new grants.² As it was, the lesson was soon lost; and a further decree, issued by the king in 1743, seems to have fared no better than its predecessors as regarded its strict enforcement.³ It is to be remembered, however, that during the last twenty years of French rule in Canada it was hardly possible to insist too rigorously upon any stated progress in the matter of clearing lands. This was an epoch of storm and stress in New France, when it was necessary to bend every effort to the task of keeping the colony out of English hands. During these two decades the number of incoming settlers was small, and the drafting of thousands of the population into active military service caused a great scarcity of agricultural labour. In these years the seigniorial system even failed to hold its own. Although a few additional seigniorships were granted, there was little clearing or cultivation of new lands;

¹ *Édits et Ordonnances*, II. 555-561.

² See, for example, *Titres des Seigneuries*, 204.

³ *Édits et Ordonnances*, I. 572-574.

on the contrary, many cleared holdings were abandoned or were left for years without proper attention, the cultivators finding themselves pressed into service at arms for the king. At intervals, whenever the military horizon brightened, men were allowed short furloughs that they might go home and accomplish what they could on their farms. On more than one occasion, indeed, the defensive strength of the colony was seriously weakened by the fact that militiamen were allowed to return to their homes for brief periods during the vital seasons of seedtime and harvest—an expedient that was almost absolutely necessary, for the British command of the seas rendered New France dependent for her subsistence almost wholly upon her own resources.

Although seigniorial concessions had been made for a century or more, it was not till 1743 that the procedure to be followed in granting or revoking lands was definitely laid down. Prior to 1627 grants had been made in the name of the titular viceroy and lieutenant-general of New France, from 1627 to 1663 by the agents of the Company of One Hundred Associates, from 1664 to 1666 by the Company of the West Indies, from 1666 to 1674 by the intendant alone, and from 1674 to 1760 by the governor and intendant jointly; but not till 1743 had any of these authorities received definite instructions as to their exact course of action. In this year, however, the point was covered by a royal decree, which, after declaring the evil results of lack of uniformity in the making of seigniorial grants, proceeded to define precisely the methods to be pursued.¹ Grants were to be made, as heretofore, by the governor and intendant jointly, or, during the absence or disability of either of these officials, by the officer temporarily performing the duties of governor or intendant. Revocations of grants were to be decreed by the same authorities; but when a difference of opinion should arise between

¹ Royal Arrêt concerning Concessions and Revocations of Land in the Colonies, July 17, 1743, *printed below*, pp. 188-192.

the two the senior available member of the Superior Council was to be summoned as arbiter. All title-deeds not signed by both officials were to be declared void. The decree likewise confirmed to the governor and intendant their exclusive jurisdiction in all contestations arising in regard to the validity of land titles or the location of land boundaries, but declared that disputes connected with the division of lands among heirs were to continue within the jurisdiction of the regular royal courts. The authorities were cautioned not to grant lands which had been already allotted, or to regrant forfeited seigniories before the decree of forfeiture had been duly promulgated. In all cases relating to the interpretation of seigniorial rights, an appeal to the ~~Council of State in France~~ was to be permitted.

The provisions of this decree did not essentially change any important feature of the existing land-tenure system. It had been the practice, when the governor and intendant failed to agree, to refer the matter to the king; but this course had caused inconvenient delay, which was now to be remedied by the plan of calling in a member of the council. In no case was a grant to be considered final until ratified by the crown; but this ratification was largely a formality. Reports of titles issued were sent home from time to time, and in due course *brevets de ratification* were received, a batch of titles being usual confirmed in a single royal decree. Sometimes the king, in ratifying grants, took occasion to insert some new condition, usually designed to expedite the clearing of the granted tract; more often, however, he confirmed the titles without comment. Persons to whom seigniorial lands had been given did not usually wait for the royal ratification, but began at once their work of development, rendering their fealty and homage and filling their *aveux* without delay. No initial payment was exacted, even the title-deed apparently being issued without any fee; indeed, no annual payment or service of any kind whatever.

was exacted from seigniors by the crown. If a seigniory changed hands otherwise than by inheritance in direct succession, a fine of one-fifth of its value, commonly known as the quint, became due and payable to the royal treasury at Quebec. Invariably, however, the king remitted one-third of this payment; and occasionally the authorities sought and obtained a remission of the whole amount by bringing to the royal notice allegations of meritorious services on the part of the seignior concerned.¹ Owing to the comparative infrequency of land transfers other than by inheritance, and to the frequency of remissions either in whole or in part, the proceeds accruing to the royal treasury from this source were never very substantial.

But although the seignior was not subject to any important financial burdens he had several general obligations as liegeman of his sovereign. One of these was, of course, the duty of military service, the most characteristic incident of feudalism in its earlier days, and one which in Canada was revitalised and put in bold relief among the other features of seigniorialism. Again, since it was the royal desire that Canada should not only defend but nourish itself, the obligation of clearing and developing the seigniories was imposed upon those who held them, a requirement which the royal authorities insisted upon with emphasis and frequency. On no point, indeed, was the king more insistent than upon this, that the seigniors must regard themselves as effective agents in colonial development; if they did not as a class fully appreciate this aspect of their position, it was not because his Majesty failed to make it clear. Then there were several less important seigniorial obligations. Seigniors were required to reserve for use in the royal shipyards all oak and pine timber suitable for mastings, and to report to the autho-

¹ Despatch of Messieurs de Beauharnois and Hocquart to the Minister asking for a Remission of the Quint on behalf of Major Péan, September 30, 1736, *printed below*, pp. 177-178.

rities the discovery of any ~~mineral deposits~~ within the limits of their seigniories. If the government desired portions of their land for fortifications or other public use, they were under obligation to surrender the tracts without demanding compensation. These and similar requirements the seigniors for the most part respected, and compelled their dependants to respect.

Taken as a whole, the burdens imposed upon seigniors by the crown were easily borne. If the king erred at all it was on the side of liberality; but in view of colonial conditions the royal largesse was not without good reason, ~~for the seigniors as a class were poor in worldly possessions.~~ Far from being able to ~~make~~ substantial contributions to the royal exchequer, there were those among them who confessed their pitiable poverty by direct appeals to the king for alms. Most of the seigniors lived, not in Quebec, Montreal, or Three Rivers, but upon their own lands. Although a small number of non-residents are mentioned by Catalogne, prevailing absenteeism, the curse of seigniorialism in France, was not one of the evils with which the colonial authorities had seriously to contend. In New France it was not that the owners failed to live on their domains, but that they were not energetic enough in persuading others to bear them company. With the seignior living and working day by day on his land, sharing with his habitants the hardships and privations of pioneer life in a virgin land, there naturally sprang up between him and his dependants a spirit of *camaraderie* and ~~mutual familiarity~~, which, if it did not altogether meet the official notion of proper class relationship, was at least effective in giving Canadian feudalism a real vitality, and a source of strength that it had long since lost in France.

Those seigniors—and they formed quite the majority among their class—who did not seek to reap where they had not sown, cast about energetically for persons who would become their dependants. Some of them arranged by cor-

respondence with friends in France for the despatch of settlers; some made it their business to be in Quebec every springtime when the vessels arrived, in order that they might greet the newcomers with attractive propositions; others pursued the policy of letting settlers come to them, a plan which seems to have commended itself to more and more seigniors as choice locations became less available. In any case the applicant for lands arranged terms with the seignior, the nature of the bargain depending partly upon the attractiveness of the grant and partly upon the liberality of the seignior with whom he had to deal. In general, however, there was no very wide variation in the terms of agreement; but neither was there any such approach to uniformity as some have assumed. Indeed, it was not the royal design that all lands should be given on precisely the same terms. All that was expected of seigniors was that they should make reasonable demands, and not subject newcomers to extortion or locate them less advantageously than the older settlers of the colony.

An invariable requirement in deeds of lands given *en censive* was that the holders should pay a small annual due called the *cens et rentes*. This payment, amounting to a few sous, supplemented usually by some fowls or a small quantity of grain, for every arpent of frontage, became due in the autumn of each year, and was made to the seignior on St. Martin's Day at the seigniorial residence or manor-house. The occasion became a local fête, to which all the inhabitants of the seigniory came in calèche or cariole, the women to share in the general retail of neighbourhood gossip while the men turned in their tallages of corn and poultry. When the lands of a habitant changed hands a money payment, the *lods et ventes*, amounting to one-twelfth of the mutation price, was payable to the seignior, who, if he thought this less than his proper due, claimed the right of buying in the land at the alleged price. This privilege was the *droit de retrait roturier*,

lxxxviii HISTORICAL INTRODUCTION

regarding which the officials on more than one occasion registered their complaints. Again, when the seignior erected a grist-mill, the habitants were required by the terms of their deeds to carry thither their grist to be ground, the seignior retaining one-fourteenth of it as his toll. There was much complaint about these mills on the ground that they made flour which was too coarse, that the millers employed by the seigniors were raw hands who did not know their business, and that they were sometimes dishonest in keeping more than their proper toll. Moreover, most of the mills were wind-mills, and hence so unreliable that the habitants, as they vigorously complained, sometimes had to wait days before the wind took on sufficient strength to turn the clumsy wheels. Still, the banal obligation, as it was called, was not in itself an important burden upon the people of the seigniories; nor was it in general, throughout the old régime, a source of profit to the seigniors, many of whom provided and maintained the mills at an actual loss, since the small number of settlers in a seignior frequently did not provide custom enough to pay the miller's wages. To neither the obligation itself nor the rate of toll did the habitants, so far as can be ascertained, ever raise serious objection; their complaints were invariably connected with the crude fashion in which some of the mills were equipped and operated. It was only after the British conquest, when the seigniories became populous, that the obligation of mill banality became a source of large emolument to the seigniors and a distinct imposition upon the people. The other banal obligation, that of bearing bread to the seigniorial oven, needs no comment; for it was never exacted except perhaps in one or two isolated cases, and even of these we have no definite evidence.

Much emphasis has been laid upon the seigniorial exaction of corvée, or forced labour, which was in France among the most vexatious of all the lord's impositions. It is true that in Canada days of corvée were stipulated for in the title-deeds of

lands given to settlers, and that many seigniors, perhaps most of them, regularly exacted from their habitants some free labour each year upon their private domains; but it is also true that the number of days insisted upon was small—usually only three a year, and rarely more than six. By a decree of the intendant the seignior might exact only one day in seedtime, one day in haytime, and one day in harvest; if he had stipulated for more than these three days he might take them only during the seasons of ploughing. Furthermore, any habitant who wished to be relieved of his obligation might secure exemption by paying to the seignior forty sous per day in lieu of corvée. Usually the seignior employed this labour to secure the ploughing, sowing, and harvesting of his own private domain; more often, perhaps, he used it in clearing the “commons,” or general pasture lands of the seigniors, or in repairing the manor-house, the mill, or the roads and bridges of the seigniorie. This seigniorial corvée is not to be confused with the royal or king’s corvée, which was exacted under the authority of the grand voyer from time to time, and employed on the fortifications or public highways. Neither form of forced labour was, under the old régime, regarded by the people as an important burden, and protests against the exaction were then extremely rare; but after the British conquest the seigniors seem to have increased, more or less generally, the number of days demanded, and this action roused vigorous resentment among the habitants.

In addition to the foregoing dues and services, the seigniors imposed upon their dependants certain reservations and prohibitions. Besides claiming all minerals found in the granted lands, most of the seigniorial proprietors reserved the right to take from them such timber, stone, firewood, and other materials as might be needed in the construction and maintenance of the manor-house, the mill, the church, or the presbytery. Some prohibited their dependants from trading with the Indians, from selling marketable timber, or from erecting

any sawmills or like utilities. Still others asserted their *droit de pêche*, or the right to one fish in every eleven caught by the habitants, a privilege often emphasised by writers as a typical incident of seigniorial pettiness, but never regarded by either seigniors or habitants as of any account. In the same category may be mentioned the seignior's *droit de chasse*, or privilege of hunting with hound and falcon over the cultivated farms of his people. In France no other seigniorial prerogative was more sincerely detested than this, and none with better reason; but in the colonies the hunting right was never exercised, for there, from the very nature of things, the seignior found abundant scope for his sporting proclivities elsewhere than in the ripening fields of his liegemen. Various other privileges of a minor nature the Canadian seignior sometimes claimed, but less frequently asserted—the right, for example, to keep for exclusive service in the seignior's a seigniorial bull, boar, or ram, the sole right to maintain ferries over rivers, the right to tap the maple trees growing on the lands of habitants, and so on. A few other prerogatives, like the *droit de jambage*, or marital right, were claimed by some seigniors, but without much seriousness; indeed, outside the realm of the so-termed “historical” fiction, I have found no shred of evidence to show that such claims ever passed the bounds of half-jocular threats.

If one surveys the seigniorial system in Canada as a whole and in a fair-minded spirit; one cannot escape from the conclusion that its pressure upon the masses of the people was never really onerous. The obligations of the habitant to his seignior were light, they were fixed with some degree of definiteness, and they were never exacted in a manner which might properly be deemed harsh or cruel. The crown, through its effective agent the intendant, was ever on his side; and, as the documents printed in this volume show, its intervention on his behalf was alike frequent and vigorous. If this mediation was not always so effective as it was designed

to be, it is to be remembered that the royal arm lost some of its strength when extended over the three thousand miles which separated Quebec from Versailles. There is, indeed, no error more persistent, and at the same time less excusable, than that which regards the Norman habitant of the New World as having occupied, in the closing decades of the old régime, a position analogous to that of the French *censitaire*. Unlike the latter, the Canadian never became coarse, degraded, and dispirited; throughout the period of French dominion he retained his characteristic bonhomie, vivacity, and optimism of spirit. In this connection the interesting pen portraiture which Hocquart sent to the minister in 1737, when the population of the colony numbered about 40,000, may be trusted as at least a tolerably faithful characterisation of the people as a whole.¹ As a race, he tells us, the early French Canadians were physically strong, well set-up, with vigorous stamina—a description which squares well with La Hontan's assertion of a half-century before that they were "vigorous, enterprising, and indefatigable." Pluming themselves on their courage, they were fond of honours and attentions and sensitive to slights or the lightest punishments. They were, it is true, vindictive in disposition, too fond of the wine flagon, and, as Hocquart cautiously remarks, "passed for not being truthful"; but then as now their attachment to the Church of their fathers was unflinching, and their obedience to the laws of the land bore its testimony in the almost entire absence of malefactors. Though not slothful in business, they sought mainly to serve themselves, whom they esteemed as the salt of the earth, a truculent conceit which was not, the intendant thought, a useful handmaid to industrial, commercial, or agricultural progress. Their enforced idleness in the long winter period was also, in his opinion, somewhat

¹ Memoir [of Hocquart] to the Minister, containing a Characterisation of the French-Canadian Population [November 8, 1737], *printed below*, pp. 185-188.

detrimental to industrious habits, especially since by nature they loved the chase and the roving life in general. Unlike the peasants of France, however, their demeanour was not vulgar and boorish. Though naturally ~~independent and self-assertive~~, they could, when placed upon their honour and dealt with fairly, be trusted to meet confidence with response. This independent spirit Hocquart, bred as he was in the strict school of French officialdom, readily regarded as the earmark of insubordination, and, consequently, as something to be rigidly repressed; whereas the truth was that, as the Jesuit Charlevoix had noted many years before, the Normans of the New World "breathed from their birth the air of liberty," and their natural temperament could not be readily warped into docility.

From various other contemporary writings, among them those of La Hontan, Bougainville, and the Swedish naturalist Peter Kalm, who made a tour of New France in the middle of the eighteenth century, one may get some rudimentary idea of life in the Canadian seigniories during the old dominion. The manor-house, which was of course the social centre of the district, was usually a spacious stone structure, one or at most two storeys in height, with only a few rooms, but all of these generous in size. The large living-room, with its great open fireplace, was the most characteristic feature; for here the seignior received his habitants when they came to do business, and here he held his seigniorial court for the trial of minor offenders. The furnishings of the manor-house were frequently brought from France, but in course of time some very serviceable furniture was manufactured in the colony. Comfort rather than display was the dominant note in the abode of the average seignior. The dwellings of the habitants, while perhaps less pretentious, were none the less commodious and comfortable. Built of stone or rough-hewn timber, fitted with broad windows and doors which were doubled in winter, they were

ambling structures, usually a single storey in height, with low attic bedrooms. The roofs projected well over the walls in broad eaves, and out of them small high-peaked dormer windows thrust themselves like the heads of turtles from the canopies of their shells. Within were two or three spacious rooms with low ceilings, supported by rough and unconcealed beams—a living-room with its fireplace, a roomy kitchen with its huge bake-oven, and a single ground-floor chamber forming the ordinary divisions of the dwelling. At the rear of the house a rough lean-to structure furnished a storeroom for provisions and utensils, and near by were usually the barn and the stable, simple in construction, and almost always without timber floors. As all the houses were whitewashed on the outside, from the river the long row of white cottages strung along the shore presented a sharp contrast to the background of green hills beyond.

The rude comfort in which the habitants of New France lived seems to have distinctly impressed several visitors to the colony. One of these, the facetious La Hontan, remarked that “the boors of the manours,” as he termed them, lived with greater comfort “than an infinity of the gentry in France”;¹ and many years later the observant Swede, Peter Kalm, added his testimony to the general air of contentment which characterised the population of New France.² As there was plenty of fuel, the long, severe winters seem to have caused them little hardship. Warm cloth of drugget, or *étouffe*, was manufactured in the colony, and in this the people clothed themselves at little expense. Their daily fare, too, though simple, was nourishing and always adequate. Amusements and recreations they had in plenty, especially during the winter season; indeed, the spirit of gaiety, if not of frivolousness, which marked the daily life of the people gave the

¹ La Hontan, *New Voyages*, I. 35.

² Peter Kalm, *Travels into North America* (2 vols., London, 1772), II. 241–242. Kalm visited New France in 1749.

austere emissaries of the Church many serious misgivings. Then, as perhaps ever since, the French-Canadians took too little thought for the morrow; as Charlevoix remarked, they liked "to get the credit of their money, and scarcely anybody amuses himself by hoarding it."¹ Very few of the habitants were opulent; indeed, too often, it appears, real poverty was hidden under an air of ease, which through long continuance had become sufficiently natural to mislead even the practised observer. Large families were the rule; for with laudable fidelity the Norman colonist obeyed the scriptural injunction to be fruitful and multiply. In the maintenance of his numerous progeny, therefore, the habitant often carried a burden much heavier than that represented by all his obligations to either the crown or the seignior.

In replenishing the earth, however, he was much less assiduous, and his methods of agriculture were slovenly and crude. Very aptly might Catalogne remark that, if the lands of France were cultivated like the lands of Canada, three-fourths of the people would starve. Fertilisation of the farms was rare, most of the landowners contenting themselves with burning the stubble in the spring before the land went under the plough. Rotation of crops was all but unknown; indeed, in view of the peculiar configuration of the holdings, scientific rotation would have been difficult, if not impossible. A portion of the land, it is true, was permitted to lie fallow every two or three years; but as these fallow fields were so rarely ploughed that they grew weeds without restraint, the rest from cultivation was of little service. Kalm, in 1749, saw no drains in any of the farms which he visited, although, as he naïvely remarks, "they seemed to be needed in some places." Fences, too, were uncommon, save about the small kitchen gardens near the houses, a circumstance which led Catalogne to comment upon the damage done to the crops by cattle which were permitted to roam at large. The land

¹ F. X. Charlevoix, *Journal Historique* (Paris, 1744), 80.

was ploughed in ridges, with a breadth of two or three yards between the furrows; and the sowing was done entirely in the spring. Kalm found "white wheat most commonly in the fields"; but peas, oats, rye, and barley were also grown, and some habitants found it profitable to adopt from the Indians the cultivation of maize. Roots and vegetables, chiefly cabbages, pumpkins, and melons, there were in plenty; some of the farms had small orchards; and many of the habitants gave special attention to the growing of flax and hemp. The meadows of the St. Lawrence valley were excellent, far superior, in Kalm's estimation, to those of the English colonies to the southward; they furnished fodder in such abundance, indeed, that the raising of horses and horned cattle became an important branch of colonial husbandry. Owing to the lack of adequate barn accommodation, the habitants stacked their hay in the meadows to draw it in during the winter as occasion demanded; their conical stacks which dotted the shores of the St. Lawrence eliciting comment from various European visitors to the colony. Implements and methods of agriculture were both somewhat primitive; yet Kalm found many things in the farming system of New France which he deemed worthy of commending to the yeomen of Scandinavia. When one remembers the numerous and serious obstacles which lay in the path of agricultural development during the French régime—the rigours of the climate, the insatiable demands of the fur traffic upon the life-blood of the colony, the distractions of almost continual warfare with encircling foes both white and red, the cumulative burdens laid upon the husbandman by his family, his seignior, his church, and his sovereign—when all these are taken into account, it is perhaps not a matter for surprise or cavil that the St. Lawrence valley had not, in the course of a single century, become a new Eden. Yet the traveller who passed along the river from Quebec to Montreal in the early autumn might see, as Kalm saw, a continuous field of

waving grain extending inward from the shores as far as the eye could reach, and stretching lengthwise nearly two hundred miles. Over two hundred thousand arpents of land had been cleared, and this tract nourished a population of nearly fifty thousand souls. Agricultural progress had not, it is true, met the royal expectations; yet the colony, when the English came upon it, was far from being in a state of complete economic debility.

→ When the fleur-de-lis of the Bourbons fluttered down from the ramparts of Quebec on the 18th of September, 1759, the future of the Norman race in the New World was virtually committed to the hands of a new suzerain, and a new epoch in the history of Canadian seigniorialism was begun.¹ If there was any doubt on this point it was removed by the capitulation of Montreal less than a year later, an event which involved the entire withdrawal of French military and civil control from the Canadian colony. By the terms of this agreement there was to be no interference, by the new suzerain power, with any vested rights which had been acquired by either the seigniors or the habitants in the lands of the colony under the seigniorial system. All were to be maintained in the peaceable possession of their lands, whether held *en seigneurie* or *en roture*, and in the enjoyment of whatever rights had accrued to them as donors or as holders of the soil.² The maintenance of the feudal régime in Canada after the British conquest has by some critics been regarded as a cardinal error, and the provisions of the Quebec Act which anchored the system some years later have come in for their meed of censure; but if there was any error the wrong step was taken in 1760, and

¹ For a detailed account of the progress of the seigniorial system during the period intervening between the capitulation of 1759 and the Abolition Act of 1854, the reader may be referred to the editor's volume on *The Seigniorial System in Canada* (New York, 1907), chaps. xi.-xii.

² Extracts from the Articles of Capitulation of Montreal, September 8, 1760, *printed below*, pp. 193-194.

not later. The capitulation of Montreal was a conditional surrender. The terms pledged to the French by General Murray were such as he was perhaps not compelled by the exigencies of the military situation to grant had he not felt so disposed; but, once granted, the new suzerains would have been false to the traditions of England had they not respected them to the letter. These terms pledged the maintenance of the seigniorial system of land tenure; for, by guaranteeing that landholders should suffer no deprivation of their *biens seigneuriaux*, they assured to all seigniors a continuance of their existing privileges.

Although the political destiny of Canada was virtually settled in 1760, the war dragged on in Europe until the conclusion of the Peace of Paris ~~three years later~~. During this interval the colony was under a military administration, the three districts of Quebec, Three Rivers, and Montreal being each placed in charge of a military officer, with justice dispensed by special military courts. In accordance with the pledges given in the capitulation, these courts upheld the seigniors in the enforcement of their various feudal rights, and strove to settle all disputes concerning land tenures by reference to the jurisprudence of the old régime. In their interpretation of the old land-laws, however, they were not accurate; indeed, some of the decisions of the military courts show that the judges quite misunderstood the most elementary principles of feudal law, and that in many cases the seigniors used the opportunity to profit by the misunderstanding.¹ All this, however, is not surprising; for the officers in charge of the military courts were ignorant not only of the laws of the country, but even of its language.

The new authorities had pledged themselves to maintain the seigniorial system; but they now went farther and gave evidence of their design to extend it by making new seigniorial

¹ Decision of the Military Court in the Case of Le Duc vs. Hunaut, April 20, 1762, *printed below*, pp. 194-195.

concessions. In 1762 two new seigniories, both on the Lower St. Lawrence, were granted by General Murray, military governor of Quebec—one of them, the seigniorie of Malbaie (Murray Bay), to Captain John Nairne of the 78th Regiment,¹ the other, that of Mount Murray, to Captain Fraser also of the regular forces. In drawing up the title-deeds Murray followed the general lines of the old French patents, except that he gave no judicial powers to the grantees; indeed, none of the older seigniors were permitted to maintain their ~~no~~ seigniorial courts after the conquest, all cases now coming in the first instance before the military courts. That Murray's example in the matter of granting new seigniories was not followed by his successors, was no doubt due chiefly to the fact that Englishmen who sought grants of land in Canada preferred to receive them in free and common socage rather than as seigniories. With the exception of these two concessions, indeed, and one or two others, no extension of the area held under seigniorial tenure was made after 1760.

The first care of the new suzerain authorities was to obtain such reliable information about the land-tenure system as might be of service in considering questions of future policy; and to this end they asked General Murray and others to send them reports on the general conduct of administration under the French. This request was complied with during 1762 by the transmission of documents which are of interest and importance as showing the general attitude of the new officials toward the old institutions and methods of the colonial population. Murray's report gave special attention to the seigniorial system, and disclosed the fact that during his short sojourn in the colony this institution had not impressed him very favourably;² but some of his views, it may

¹ Title-deed of the Seigniorie of Murray Bay, granted to Captain John Nairne of the 78th Regiment, April 27, 1762, *printed below*, pp. 195-196.

² Report of General James Murray on the State of Canada under French Administration, June 5, 1762, *printed below*, pp. 196-205.

be added, underwent a decided change during the ensuing few years.¹ Meantime, however, these reports had their influence upon the home authorities, and were in part, no doubt, responsible for the issue, in 1763, of a code of instructions relative to future land grants. These instructions commanded that thenceforth all grants of land should be made in free and common socage, but that all lands granted under the old dispensation should remain subject to the rules of the ancient tenures. The new socage grants were to be of moderate area; for the home authorities recognised that great disadvantages had been incurred in the development of the colony through the exercise of undue royal generosity in the allotment of lands.²

Shortly before these instructions were issued, terms of peace had been concluded between the two mother countries; and among the provisions of the treaty was one which permitted French landholders in Canada to sell their estates freely, and, if they so desired, to go home to France, a permission of which many of them took advantage. To attempt to form any estimate of the numbers or the nature of this *hegira* is to enter the realm of controversy, but unquestionably the exodus removed from the colony many of its leading seigniorial proprietors. English seigniors took their places; for those Englishmen who came [to the colony in the years immediately following the conquest saw that the purchase of seigniories at sacrifice prices was an excellent method of investment, especially since most of the estates included large tracts of ungranted lands which, as the colony grew in population, would undoubtedly increase in value. The dues and services to which the seignior was entitled did not, at that time, to be sure, yield a very substantial return; but this, as the new English arrivals were quick to see, was

¹ See *below*, pp. . . .

² Instructions to Governor James Murray concerning the Granting of Lands in Canada, December 7, 1763, *printed below*, pp. 206-216.

only because most of the lands were but sparsely settled. Large emoluments, they knew, might be had from the seigniorial exactions in due time.

To the French habitants, however, the change of ownership was far from welcome. The new English seignior was to them the representative of a conquering alien race, who knew not their language, traditions, or laws. He was, moreover, one who had been nurtured in heresy, and might be counted upon to take no part in the religious interests of the seigniory. What was even more to be deplored from their point of view was the fact that he was more than likely to bring English settlers into the seigniory among his dependants, and thus to destroy its ancient racial and religious homogeneity. The situation in many seigniories was therefore extremely delicate, and there was need for the exercise of much forbearance, tact, and democracy on the part of the new seigniorial owners. These qualities, unfortunately, most of them did not possess; on the contrary, their aggressive insistence upon the letter of their seigniorial privileges, their disposition to regard their new purchases as investments, and consequently their ill-concealed desire to exact a little more from their tenants at every possible turn—all this, together with their militant activities in the interests of the Anglican Church, widened the natural gap which lay between them and their dependants. In many cases the old personal nexus passed away, and with its passing the chief prop of the seigniorial system was correspondingly weakened.

Matters were in no wise improved by the action of the British Government in providing, during the course of 1763, that nothing but English law was to be administered by the civil courts of the colony, which were now replacing the military tribunals. Unfortunately, the English law of real property squared so ill with the conditions of tenure under which most of the colonial lands were held, that the English judges, in their attempts to apply its principles to cases which

came before them, found themselves hopelessly confounded. In 1766, therefore, it was arranged that cases concerning land should be dealt with by the courts in accordance with the rules of the old French law, in so far as this could be ascertained by the courts, but that in all other actions, civil or criminal, English law should continue to be applied. This arrangement, it is true, somewhat alleviated the legal situation; but it did not render conditions entirely satisfactory, for there were inherent difficulties connected with the attempt to administer the old system of land law by means of a new system of judicial machinery. In the first place, the judges were all Englishmen, and few of them could carry on the business of their courts without the constant assistance of interpreters. Moreover, even those among them who strove the most earnestly to master the old legal method found the task bewildering; for the system rested upon a multitude of *arrêts*, ordinances, and decrees which were still in manuscript, unarranged, unindexed, and in a handwriting which even to-day frequently taxes the patience of the trained investigator. The first compilation of the old jurisprudence was not attempted for ten years after the coming of the English, and during this interval the courts were left to grope along as best they could.

The land law of the old *régime* was not customary law. It was based fundamentally upon the Custom of Paris; and this was a code, not of customary, but of statutory law, drawn up by expert jurists and enacted by sovereign authority. The original provisions of the Custom had, however, been ruthlessly amended by the mass of home and colonial decrees issued profusely throughout a whole century of royal government in New France—a prodigious activity in legislation that had, by 1760, resulted in the accumulation of more than one hundred ponderous manuscript *registres*, which still repose in the archives at Quebec. As the accurate knowledge of the law upon any particular point involved a knowledge of what was contained in this chaotic compilation, it is little wonder

that the judges sought and found an easier path to knowledge by calling before them, from time to time, notaries and others who professed to be skilled in the laws of the old dominion. Since the customs of the country were so much easier to discover than the laws, the courts, too, often sought to find out what had been done in the past, and, having informed themselves, proceeded to give decision accordingly. When the points involved were so difficult that the judicial authorities could not come to any satisfactory conclusion as to the provisions of the old law, they resorted, for reliable information, to skilled jurists in France. In 1767, for example, they sought the opinion of "three eminent lawyers of Paris" as to the nature and scope of certain reservations and other conditions which had, under the old dispensation, been inserted in most of the title-deeds of seigniorial lands. A study of this opinion will of itself afford some idea as to the complexity of the problems which the new courts of the colony found themselves called upon to solve.

Manifestly, in such circumstances the administration of the seigniorial system could not be the same under the new suzerains as under the old. It was entrusted to strange and not altogether sympathetic hands which, even with the best intentions, were sure to blunder badly. One curious but none the less persistent error made by the English judges was that which led them to force an analogy between the copyhold tenures of England and the *en censive* tenures of Quebec. The incidents in English copyhold tenure were determined fundamentally by the customs of the manor or the neighbourhood; and had not the French king, they argued, made express provision, in a royal arrêt, that *en censive* lands in New France should be granted subject to

¹ Opinions of Three Eminent Lawyers of Paris, prepared at the Request of the Canadian Authorities, as to the Legality of certain Clauses and Conditions commonly inserted in Titles to Seigniorial Lands, February 14, 1767, *printed below*, pp. 218-216.

the dues and services customary in the seignior? Why should not the courts, therefore, in any case brought before them, discover what was the custom of the seignior and adjudge accordingly? But between tenure in copyhold and tenure *en censive* there was one fundamental difference—namely, that the copyholder held no formal title-deed, whereas the *censitaire* had a written document, signed by the seigniorial grantor, which stated explicitly the dues and services that the landholder was bound to render. By the terms of this title-deed the conditions of tenure *en censive* were determined in the first instance, provided always that these terms were not repugnant to the Custom of Paris and to the ordinances in force in the colony; only in rare cases, when no deed had been granted, did the custom of the seignior have any bearing whatever upon the matter. The royal decrees did not prevent the making of any bargain which the parties to a transaction chose to conclude; they merely permitted the habitant to insist, if he so chose, that the terms imposed upon him in this initial arrangement should not be more onerous than those imposed upon his prospective neighbours. The English courts, on the contrary, insisted upon making local customs the test of seigniorial prerogatives, a practice which was in most cases greatly to the advantage of the seignior.

In one other important point the new system failed to perpetuate the old. Before the conquest the royal intendant, that factotum of French colonial administration, possessed a jurisdiction with reference to all land questions which was little less than pretorian. Time and again he had taken it upon himself to refuse enforcement of seigniorial claims which, while thoroughly legal, were deemed contrary to public policy; for neither law nor custom required him to permit the enforcement of exactions which might be regarded as oppressive or at variance with his own ideas as to the proper relations between seigniorial proprietors and their dependants. The intendant's

jurisdiction was therefore both judicial and administrative. Furthermore, as he exacted no fees for his intervention in any cause, his interposition might be had by the poorest habitant. Those students of the institutional history of New France who have not dipped beneath the surface have hastened to brand the intendants of the old régime as rare rascals, who divided their energies between quarrelling with the governors and peculating public funds. Yet of the eleven intendants who held office in the colony from first to last it would be hard to designate more than two whose combativeness or rascality was at all conspicuous. Judging it by its achievements, the intendancy, as an institution, was the most efficient and the most flexible of all the organs of colonial government during the old dominion. It was the balance-wheel of the whole system of seigniorial relations; and the British authorities erred in failing to recognise that without some provision for the continuance of its administrative jurisdiction, the seigniorial system of land tenure would speedily become bereft of its ancient adjustment.

Under the new dispensation, then, the spirit of the old order of things was not maintained. The English courts had no discretion except to administer what they conceived to be the law; they had no authority to issue decrees dictated by the interests of public policy but repugnant to legal enactment—a policy in full consonance with the traditions of Anglo-Saxon government, which had for ages clung steadfastly to the canon that where the reign of law ends tyranny begins. In order, therefore, that the colony might have a government of laws and not of men, the new suzerains established the new order; and the wisdom of their action may well pass unquestioned. Its direct bearing upon the future of Canadian seigniorialism has, however, scarcely received due consideration. The changed condition of affairs naturally gave great advantage to the seigniors, more especially because litigation was now so expensive that many habitants found themselves virtually

debarred from the protection of the courts. In 1794 the Attorney-General of the province gave it as his opinion that, while the habitants had a perfect right to refuse to pay the increased dues demanded by the seigniors, the expensiveness of enforcing this right in the higher courts "deprive them, as he puts it, of the possibility of obtaining justice, compels them to abandon their rights and to throw themselves upon the mercy of their seignior, who compromises the action and grants a new deed of concession upon his own terms."¹

During the years 1763 to 1791, both home and colonial authorities busied themselves with the consideration of means by which the administration of the legal system in general and the law of real property in particular might be improved. One of the most active in the matter was Governor Carleton who, besides securing a codification of the ancient laws so that they might be used by the courts intelligently, succeeded in obtaining from the British Government the re-establishment of the whole fabric of French civil law, with permission to continue the practice of granting seigniories whenever applicants should apply for them. Carleton showed not only sincere sympathy with those who desired to maintain and to foster the old system of land tenure, but also vigorous initiative in securing royal action to this end. His judgment on the subject, particularly in connection with the framing of the Quebec Act of 1774, which re-established the civil law and thereby anchored seigniorialism in Canada, has been frequently criticised; but, as has already been pointed out, the error involved in the retention of the seigniorial system, if error there was, dates from the pledges given in the capitulation of 1760 and not from the act of 1774. Indeed, had the British authorities in 1774 taken the step of entirely anglicising the laws and the tenure of the colony, they would have matched in Canada the administrative follies which they were

¹ Report of the Attorney-General, February 27, 1794, in *Titles and Documents relating to the Seigniorial Tenure*, I. 93-95.

contemporaneously displaying in some other parts of the realm. That the seigniorial system was not thus swept away at a moment which was of all times the most inopportune, but was left to perish ultimately at the hands of its own friends, without any requiem of violated pledges, was due not a little to Carleton's vigorous intervention. To him, as his published despatches amply attest,¹ the French Canadians owed very much.

That the seigniorial system had undergone an important change in spirit even though its external forms had remained unaltered was shown when, during the course of the Revolutionary War, the continental forces invaded the colony. During the French period the call to arms had invariably met ready response from the seigniors, a word from whom was always sufficient to rally their dependants to the service of the king; indeed, the disposition of both classes to drop the sickle for the musket was, if anything, too ready at all times. When, however, fifteen years after the English Government had assumed charge of the colony, its representatives deemed it urgently necessary to issue a similar call, the response was of a very different nature. The seigniors, many of whom were English, obeyed the summons cheerfully, but the habitants as a whole remained sullen and aloof. Seigniorial threats that their lands would be forfeited as the penalty of their recalcitrancy availed little; and a few seigniors who insisted with more vigour than tact upon their right to enforce the obligation of military service were handled with ominous roughness by their habitants. Undoubtedly, the opposition

¹ Despatch of Governor Carleton to the Earl of Shelburne regarding the Administration of English Law in Canada, December 24, 1767, *printed below*, pp. 227-231 (accompanying draft of an ordinance, pp. 232-231); Despatch of Governor Carleton to the Secretary of State, giving a short Outline of the Seigniorial System, April 12, 1768, *below*, pp. 235-238; Report of the Council for Trade to the King, recommending the Issue of New Instructions in regard to the Granting of Land in Canada, April 24, 1771, *below*, pp. 238-239; Royal Instructions to Governor Carleton permitting the Governor-in-Council to make further Grants of Land under the Seigniorial Tenure, July 2, 1771, pp. 240-241.

with which the people met the call has been exaggerated by some of the contemporary writers who refer to the matter; but, with all due allowance for any over-statement, the fact remains that the seigniorial system, as tested at this time, showed none of that effectiveness as a means of augmenting colonial military strength which it had displayed again and again during the old régime.¹

As the eighteenth century drew to its close the growing weakness of the old land-tenure system became more and more apparent. The influx of Loyalists greatly augmented the number of socage landholders; and little by little the impression gained ground, even among the French themselves, that the English tenure was quite the more advantageous. Applications began to come to the authorities praying that the tenures of certain lands might be converted from the old to the new; and in connection with these requests the whole question as to the future of seigniorialism came to engage the earnest attention of the government. To this renewed interest in the relation of tenures to future colonial development, the lengthy report of the Solicitor-General of Quebec, presented in 1790, bears testimony. In this report the whole history of the system was reviewed; its various incidents were analysed with care and tolerable accuracy, and the possibility of a conversion of tenures was discussed.² About the same time one of the leading seigniors of the colony, Charles de Lanaudière, presented a similar report,³ and the Legislative Council of the colony, acting upon the information thus laid before it, adopted a series of resolutions in the course of which it declared that the seigniorial system had been a leading cause

¹ A Contemporary Account of the Disorders connected with the Attempt to enforce the Feudal Obligation of Military Service in the Province of Quebec during the American Invasion of 1775, *printed below*, pp. 241-246.

² Report of the Solicitor-General upon various Questions relating to the Seigniorial System, October 5, 1790, *below*, pp. 250-267.

³ Answers submitted by Charles de Lanaudière to various Questions relating to the Seigniorial System, October 11, 1790, *below*, pp. 267-273.

of tardy colonial progress, that it would in all probability operate more detrimentally in the future than in the past, and that, although compulsory conversion of tenures would be inexpedient, favourable consideration and encouragement ought to be given to those seigniors who voluntarily applied for such changes.¹ From this general view one of the councillors, Mr. Adam Mabane, expressed a vigorous dissent, mainly on the ground ~~that the conversion of tenures would give the seigniors full property in their ungranted lands,~~ a right which they did not legally enjoy under existing conditions.²

The proposals of the Council looking toward the conversion of tenures by voluntary process met an unexpected check in the following year, when the Constitutional Act made provision for the division of the colony into the two provinces of Upper and Lower Canada. One of the provisions of this act required that, whenever a grant of lands was made in Lower Canada (or Quebec), an area equal to one-seventh of the granted tract should be set aside for the support of a Protestant clergy, a measure which resulted in the creation of what came to be known as the Clergy Reserves.³ Presently, therefore, the colonial authorities, in maturing their projects for permitting seigniors to surrender their lands to the crown and receive them back under new grants in socage, encountered the question whether, in such cases, the regrants would rank as grants *de novo*, and hence become subject to the Clergy Reserves proviso. For many years this point proved a stumbling-block; but, as applications for changes in tenure were seldom made, it was not until 1817 that the government sought and obtained from the law officers of the crown in

¹ Resolutions of the Council relating to the Seigniorial System, October 11, 1799, *printed below*, pp. 273-279.

² Reasons submitted by Mr. Adam Mabane, Member of the Council, in support of his Dissent from the Resolutions adopted by the Council, October 15, 1790, *below*, pp. 279-281.

³ Extracts from the Constitutional Act of 1791, *below*, pp. 281-284.

England an opinion as to whether Clergy Reserves would have to be retained out of lands regranted under the new tenure. This opinion was to the effect that such reservations must be made, and hence that the seignior who surrendered his lands would receive back in free and common socage only six-sevenths of the area.¹ As this fact would obviously prevent applications for commutations of tenure, the Canadian authorities requested that imperial legislation might be enacted to remove the obstacle, and at the same time to clear up several other matters that stood in the way of seigniors who desired a change in the method of holding their lands.

This request met response in the Canada Trade Act of 1822, which, after dealing with several other matters, simplified the procedure whereby a change of tenure might be effected.² Seigniors, it provided, might surrender their holdings to the crown and receive back in socage the whole areas, subject, however, to the payment of such sums to his Majesty as would have been due under the old tenures. Those who held *en censive* lands directly from the crown were to have the same privilege; but, as the act made no provision whereby the habitants might arrange with their seigniors for a commutation of their tenures, further legislation, embodied in the Canada Trade and Tenures Act of 1825, was obtained to cover this point, this new statute providing that seigniors who made arrangements with the crown for a conversion of tenure should be bound to afford to their habitants the opportunity to secure a like commutation of their holdings.³

All this legislation, however, availed but little. Although many seigniors desired to make advantageous terms with the

¹ Opinion of the Law Officers of the Crown with reference to certain Difficulties encountered by the Colonial Authorities in carrying out the Arrangements for the Voluntary Commutation of Seigniorial Lands, August 1, 1817, *printed below*, pp. 288-290.

² Extracts from the Canada Trade Act of 1822, *below*, pp. 290-292.

³ Extracts from the Canada Trade and Tenures Act of 1825, *below*, pp. 292-299.

crown, they did not find its proposals attractive if they were to be bound, in return, to make the same generous terms with their dependants. Moreover, as still another drawback, instructions were transmitted to the governor requiring that the commutation of the tenures of seigniories be arranged upon a five per cent. basis—that is, the seigniors was to pay to the crown, in commutation of all its feudal claims, five per cent. of the seignior's market value.¹ When, however, the governor pointed out in reply that it would be unwise to put all seigniorial lands upon the same basis, the instructions were so altered as to permit the exaction of a higher percentage in the case of urban as distinguished from rural holdings. Moreover, as it was now the avowed design of the authorities to encourage changes in tenure, the governor was further commanded to make no more *en censive* grants within the limits of these seigniories which had come into the possession of the crown. The facilities thus afforded to the seigniors were in due time set forth in a proclamation by the governor;² but few came forward to ask for a change of tenure, and in the next decade the provisions of the acts were applied in not more than a half-a-dozen cases altogether. From time to time thereafter the Legislative Assembly of Lower Canada took the whole matter of seigniorial abolition into its consideration, but with no substantial results; and when the rebellion of 1837–38 began, the question was no nearer its solution than before.

When, however, the last embers of the revolt had been extinguished, and the union of the two provinces into a single colony had been accomplished, the first parliament of Canada gave the question of abolishing the seigniorial system

¹ Correspondence between Earl Bathurst and Governor Dalhousie with reference to the carrying into effect of the Canada Trade and Tenures Act, August, 1825, to October, 1826, *printed below*, 299–304.

² Proclamation of Governor Dalhousie making Regulations for the Voluntary Commutation of Lands held under the Seigniorial Tenure, April 14, 1826, *below*, pp. 304–308.

its earnest attention, by appointing a commission of three to make a thorough investigation of its workings, and to propose some practical scheme of compulsory commutation of tenures which would be satisfactory to seigniors and habitants alike. This task the commissioners promptly accomplished, and in 1843 presented the results to parliament in an elaborate report containing much interesting and important information relating to the subject with which it dealt.¹ This paper may be commended to readers as affording the most comprehensive and trustworthy outline of the seigniorial system to be found in any official document prior to 1854. It contains some few inaccuracies, and in some cases the attitude of the commissioners towards various incidents of the system is not without obvious bias; but on the whole it is an able and illuminating state paper, and must have been a notable contribution to contemporary discussions of the subject. The commissioners reached the general conclusion that the seigniorial system had outlived its usefulness, that its continuance was productive of many abuses and anomalies, and that it operated as a paralysing influence upon the agricultural progress of the country. The facts set forth in support of their conclusion, gave abundant evidence that, in the opinion of the people at large, the system had under British administration reached a plane very different from that which it had occupied in the days before the coming of the conquerors. The dues and services exacted by the seigniors from their dependants had been increased all along the line; seigniorial reservations and restrictions had become more rigid; and in many cases simple prerogatives of a purely honorary nature had been turned into agencies of emolument. The relations between the Canadian seignior and his dependants toward the middle of the nineteenth century appear, in short,

¹ Report of the Commissioners appointed to Inquire into the State of the Laws and other Circumstances connected with the Seigniorial Tenure, as it obtains in that part of the Province of Canada heretofore Lower Canada, March 29, 1843, *printed below*, pp. 308-357.

to have become as deficient in cordiality as are the contemporary relations between the average English landlord and his Irish peasantry. The habitants yielded their annual payments grudgingly and with ill grace; and the few days of corvée labour which they gave during the old régime without a murmur they now looked upon as constituting a badge of servitude. Popular opinion was, as the report shows, running strongly against the continuance of the system, the very element which had in 1744 constituted its firm friends now assuming an attitude of irreconcilable opposition.

The commissioners of 1843 laid before the Assembly three different proposals looking to the entire abolition of seigniorialism, and one of these found favour. In accordance with this recommendation, two statutes passed during the next few years sought to make possible the conversion of tenures within seigniories even though the seigniors might not see fit to commute the tenures of their own holdings by arrangements with the crown. By the terms of this legislation a ~~seignior was not bound to grant applications for commutation on the part of his dependants, but he was permitted to do so whenever satisfactory terms between the parties could be arranged.~~ In many cases such terms were made; but, since the amount to be paid by the habitant to his seignior in lieu of all seigniorial claims obviously depended on the nature and extent of the latter, and since there was considerable difference of opinion as to what claims were valid and what were not, the process of conversion did not make much headway. As time went by, therefore, members of the Assembly came to feel that nothing short of a scheme of commutation which should be compulsory as regarded both parties would ever promise a final disposition of the whole question. Accordingly, in the spring of 1851, a committee of the House was appointed to draft such a measure; but as the legislation which it outlined was not regarded as satisfactory, action was postponed until the year following, when a new ministry came into office.

4/4/09

HISTORICAL INTRODUCTION

exiii

This new ministry introduced a measure of its own framed along the same lines as the previous one; but, although the bill passed the Assembly, it was defeated in the Legislative Council, or upper house of the colonial legislature.

The general elections of 1854 brought the question of abolishing the old-tenure system prominently before the people, who gave their verdict in no uncertain tone by installing in power a ministry openly pledged to the cause of abolition. One of the first administrative acts of this new government was to lay before the legislature a comprehensive plan designed to carry out the popular mandate—a measure which, like its predecessors, encountered much opposition both within and without the legislative halls, but which finally passed both houses and received the viceregal assent.¹ This act of 1854 is a long and comprehensive statute, containing a large number of detailed provisions intended to cover any contingencies which might arise, but providing in general that the tenures of all lands held *en seigneurie* or *en censive* should be forthwith commuted to tenure *en franc aleu roturier*, which was the French equivalent of the English tenure in free and common socage, or freehold. For this conversion the seigniors were to pay nothing to the crown; but the sums that would ordinarily have been exacted for such concessions they were to apply to the reduction of the dues thereafter to be required from their dependants. The habitants, on their part, were to pay to the seignior, in commutation of all his privileges and claims, either a lump sum or an annual quit-rent, at their option, the exact amount to be fixed, in the case of each farm, by commissioners whose appointment was provided for by the statute, and who were to be guided by rules prescribed by it. Naturally, the sum was to be determined with reference to the amount of dues and services which the seignior had been legally exacting in each case.

¹ An Act for the Abolition of Feudal Rights and Duties in Lower Canada, December 18, 1854 (18 Victoria, c. 3).

The authorities did not venture upon the difficult task of deciding what seigniorial exactions were legal and what were not, nor did they leave this question to the judgment of the commissioners. On the contrary, they adopted the very judicious plan of constituting a special court made up of judges drawn from the regular higher tribunals of the colony, and committing to this body the determination as to what seigniorial exactions ought to be considered by the commissioners in estimating the precise terms of commutation. This court performed its important and difficult task with the utmost credit, its work contributing greatly to the comparative smoothness with which the provisions of the act of 1854 were carried into operation. As the fixing of the terms by the commissioners took considerable time, it was not until some years after 1854 that the change of tenure had been completely effected. Sundry unforeseen difficulties arose here and there, and some supplementary legislation was necessary; but on the whole the change of tenure was accomplished with as much expedition and as little injustice to any private interests as the peculiar circumstances seem to have permitted.

By many of the seigniors the arrangements made by the act of 1854 were regarded as unfair to them; indeed, during the years preceding the adoption of the statute, the whole project of abolition had been vigorously opposed by many of them, on grounds, too, that carry the air of plausibility.¹ By some the arrangements were denounced as involving a partial confiscation of seigniorial property without adequate compensation; and it is probably true that, as investments, most of the seigniories were worth less after the passage of the act than they were before. Others complained that, since the vast majority of the habitants chose to pay an annual quit-rent rather than a lump sum in commutation of their various

¹ Memorandum of Peter Burnet, Esquire, protesting against the proposed Method of Commuting the Seigniorial Tenure, April, 1852, *printed below*, pp. 357-366.

dues, the total sums realised by the seigniors were almost invariably less than the old seigniorial revenues. Even to the present day, indeed, comparatively few of the smaller landholders in the province of Quebec have exercised their privilege of entirely redeeming their farms from all future payments; most of them continue to pay their annual *rente constituée*, as fixed by the commissioners a half century ago. Those to whom the payments go are still popularly called seigniors, but since 1854 this title has had no legal recognition. The relation between the parties is now that of landlord and tenant, with the provision, however, that the habitant, his heirs, or assigns, shall be secure in the tenure of the land so long as the annual fixed rental is promptly paid. The rules in regard to succession to real property, conveyancing, and the other incidents of landholding still follow the old canons of landholding *en franc aleu roturier*, the allodial tenure of the Middle Ages.

The twilight of European feudalism was more prolonged in French Canada than in any other country, and this prolongation in many respects proved a public evil. During the century following the English conquest the political, social, and economic environment in the colony underwent a very thorough change, but the seigniorial system had become so stereotyped that it adjusted itself very ineffectually to the new order of things. Its abolition in 1854 was, therefore, the part of wisdom. This is not to say, however, that its transplantation from France to Canada two centuries previously was an administrative error, or that during the two succeeding centuries it did not serve a useful purpose in the general economy of the colony. So long as the environment was favourable, so long as the administration was sympathetic, and so long as defence was accounted a more immediate goal than opulence, seigniorialism played a useful and even a notable rôle in moulding the destinies of New France. It gave to the colony much of its vigour in arms and much of

its characteristic aggressiveness, besides furnishing at the same time a scheme of civil organisation which was neither ignoble nor oppressive. It did little, however, to expand the human faculties of initiative and enterprise in the arts of peace. In this sphere its influence was either wholly negative or, worse still, actually depressing. Although not all the industrial stagnation which characterised New France from first to last may properly be laid at its door, the institution was unquestionably part and parcel of the general scheme of stifling paternalism which held the colony in its economic tutelage, and it must therefore be debited with its share in the general outcome. The seigniorial system, in a word, helped to make New France homogeneous, loyal to her church and her sovereign, and endowed the colony with a defensive strength quite out of proportion to her population and resources; on the other hand, it retarded the march of the colony to material prosperity, stifled the development of moral and intellectual independence, and interposed a formidable barrier to the institutions of free government.

FEB 26 1979

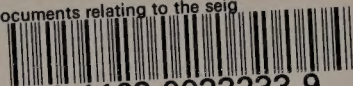
Date Due

NOV 2 9 1976	NOV 27 1981
JUN - 6 1977	
OCT 28 1982	
NOV - 7 1978	DE 31 1981
	PD
	NOV 3 1979
NOV 2 4 1981	NOV 24 1981
NOV 1 1 1980	NOV 1 1 1980
NOV 18 1980	FEB 27 1995
NOV 18 1981	FEB 27 1995
	NOV 03 1997
	NOV 17 1997
DEC 15 1981	NOV 12 1997
NOV	

F 5000 .C5 v. 3 Introd.

010101 000

Documents relating to the seig



0 1163 0033233 9
TRENT UNIVERSITY

F5000 .C5 v.3 Introd. UTLAS
Documents relating to the
seigniorial tenure in Canada, 1598-
1854

35685

DATE	ISSUED TO

Monro

35685

